COURSE 4: TOURISM AND ENVIRONMENTAL LAWS

BLOCK 1 : TOURISM AND ENVIRONMENTAL LAWS

Unit 1 : Development of Sustainable Tourism Concept .... 3
Unit 2 : Major Laws and Policies Pertaining to Tourism .... 30
Unit 3 : Tourism and Five Year Plans in India ............... 86
UNIT 1 DEVELOPMENT OF SUSTAINABLE TOURISM CONCEPT

Contents
1. Introduction
2. Concept and Definitions of Sustainable Tourism
3. Actors in the Sustainable Tourism and Barriers in Coordination
4. The Dimensions of Sustainable Tourism
5. Responsible Tourism Declaration

1. INTRODUCTION

Though the tourism industry can vary markedly from year to year (and local communities need to be prepared for this), tourism also has repeatedly shown itself to be an incredibly resilient industry that bounces back quickly from even difficult political and economic situations. People love to explore the world and see interesting new places. As soon as people are given reasonable assurance of safety, and can afford to travel, they will travel. Tourism represents one of the top five exports for 83 per cent of all countries and is the main source of foreign currency for 38 per cent of countries\(^1\).

Using consumption averages from various countries, statistics from WTO, and estimates of national tourism in relation to international arrivals, the United Nations Environmental Program (UNEP) proposed some estimates of the order of magnitude of resource consumption from tourism. The outcome of the study was that UNEP proposed that if global tourism industry were to be represented as a country, it would consume resources on the scale of a fully developed country. It stated that, over a year, international and national tourists worldwide:

- use as much energy as 80 per cent of Japan’s yearly primary energy supply (5,000 million kWh/year),
- produce the same amount of garbage as France (35 million tons per year),
- consume three times the amount of fresh water contained in Lake Superior, between Canada and the United States, in a year (10 million cubic meters).

Tourism and Environmental Laws

Given the enormous scale of the resource use of global tourism, it is clear the environmental impacts are significant. Historically much of tourism has been unsustainable. This was because:

- Tourism is a fierce competitor for resources - the provision of cultural and ecotourism opportunities for tourists may mean that local residents are displaced
- The needs of tourists are different than those of local residents and, thus, serving tourists may again not suit the needs of local residents
- Few people understand tourism and what is required to develop successful tourism products, meaning that a lot of countries have made unwise investments in tourism
- Tourism is often imposed on local communities, especially rural and minority communities, at level and speed that causes great social disruption.

Tourism has become an important economic activity in and around protected areas such as coastal zones, Marine Protected Areas, National Parks, Wildlife Sanctuaries, Biodiversity Parks, etc., around the world. Well-planned sustainable tourism programmes provide opportunities for the visitor to experience natural areas and human communities, and learn about the importance of biological and ecological conservation along with the local culture. Additionally, sustainable tourism activities can generate income for both local communities and traditional knowledge. Sustainable tourism is particularly promising as a key mechanism for local communities to benefit from the environmental and biodiversity resources, such that they may be motivated to preserve those resources.

Sustainable tourism strategies have a number of features:

- They are developed to move an organisation or destination from its current competitive position to a more desirable future competitive situation
- They adopt a medium to longer term time frame and that process evolves over a period of time
- Their achievement involves vision, objectives, direction and commitment involving all elements of the organisation or destination
- Successful strategic decisions to match the organisation’s activities with its resources. In other words, strategies must be based on the current reality.
- They are very complex and involve all stakeholders.

Ultimately, as a business strategy a sustainable tourism model is developed based on answer to these nine important questions, that a tourism provider asks/identifies for himself:

- What products do I want to offer?
- What products do I not want to offer?
Which markets do I want to target?
Which markets do I want to avoid?
Who do I choose to compete with?
Who do I choose not to compete with?
Is my model going to be successful in the long run?
Is my model going benefiting or harming the local environment?
Is my model going benefiting or harming the local community?

The parallels between strategies in general and sustainable tourism development are strong. The above questions apply to national tourism organisations, regional tourism bodies, local governments and individual businesses. If the ultimate goal of sustainable tourism development is to move a destination from its current unsustainable position to a more favoured one then the answers to these question will achieve that objective.

No destination or business can be everything to all tourists. Destinations and businesses must make a series of hard decisions about where best to allocate their limited resources to achieve the best or optimal results. No two destinations are the same and, therefore, the choices made and the paths taken to sustainability will vary from destination to destination. Determining the best path to take involves understanding the unique situation facing each destination, its competitive situation, opportunities, strengths and weaknesses. These in turn will influence the establishment of goals, whose achievement will be affected by the ability of that destination to find or develop the necessary skills required.

2. CONCEPT AND DEFINITIONS OF SUSTAINABLE TOURISM

As per UNWTO, expressed simply, sustainable tourism can be defined as, “Tourism that takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities”2.

Conceptual definition of Sustainable tourism was developed by the UNWTO on the basis of the above definition. UNWTO has developed ‘Sustainable tourism development guidelines and management practices’, that are applicable to all forms of tourism in all types of destinations, including mass tourism and the various nichè tourism segments. Sustainability principles refer to the environmental, economic, and socio-cultural aspects of tourism development, and a suitable balance must be established between these three dimensions to guarantee its long-term sustainability. Thus, sustainable tourism should:

Tourism and Environmental Laws

1) Make optimal use of environmental resources that constitute a key element in tourism development, maintaining essential ecological processes and helping to conserve natural heritage and biodiversity.

2) Respect the socio-cultural authenticity of host communities, conserve their built and living cultural heritage and traditional values, and contribute to inter-cultural understanding and tolerance.

3) Ensure viable, long-term economic operations, providing socio-economic benefits to all stakeholders that are fairly distributed, including stable employment and income-earning opportunities and social services to host communities, and contributing to poverty alleviation.

Sustainable tourism development requires the informed participation of all relevant stakeholders, as well as strong political leadership to ensure wide participation and consensus building. Achieving sustainable tourism is a continuous process and it requires constant monitoring of impacts, introducing the necessary preventive and/or corrective measures whenever necessary.

Sustainable tourism should also maintain a high level of tourist satisfaction and ensure a meaningful experience to the tourists, raising their awareness about sustainability issues and promoting sustainable tourism practices amongst them.

According to the World Conservation Union, Sustainable tourism is:\n
Environmentally responsible travel and visitation to natural areas, in order to enjoy and appreciate nature (and any accompanying cultural features, both past and present) in a way that promotes conservation, has a low visitor impact, and provides for beneficially active socio-economic involvement of local peoples.

Sustainable tourism differs from conventional tourism in many following ways. Conventional tourism is not necessarily planned to enhance conservation or education, does not benefit the local community, and can rapidly damage a fragile environment. As a result it can destroy, or unrecognizably alter, the very resources and cultures on which it depends. In contrast, sustainable tourism is deliberately planned from the beginning to benefit local residents, respect local culture, conserve natural resources, and educate both tourists and local residents. Sustainable tourism can produce the same profits as conventional tourism, but more of the profits stay with the local community, and the region’s natural resources and culture can be protected.

3 World Conservation Union Report, 1996.
Development of Sustainable Tourism Concept

In many cases, conventional tourism practices of the past have posed a major threat to marine conservation due to lack of management controls and effective planning mechanisms. In contrast, sustainable tourism deliberately seeks to minimise the negative impacts of tourism, while contributing to conservation and the well-being of the community, both economically and socially. Conventional tourism does not often provide sources of funding for both conservation programmes and local communities, while providing incentives for protecting areas from practices and development that are harmful to the natural beauty of an area. Opportunities and threats can only be controlled through well-planned and managed sustainable tourism.

Characteristics of Conventional Tourism are:
1) Has one goal: profit
2) Often not planned in advance; “it just happens”
3) Tourist oriented
4) Controlled by outside parties
5) Focus on entertainment for tourists
6) Conservation not a priority
7) Communities not a priority
8) Much revenue goes to outside operators and investors

On the other hand, Characteristics of Sustainable Tourism are:
1) Planned with three goals: profit, environment and community (triple bottom line)
2) Usually planned in advance with involvement of all stakeholders
3) Locally oriented
4) Locally controlled, at least in part
5) Focus on educational experiences
6) Conservation of natural resources a priority
7) Appreciation for local culture a priority
8) More revenue stays with local community and Protected areas

The concept of sustainable tourism follows a Triple bottom line approach. Sustainable tourism has three key components, sometimes referred to as the “triple bottom line”:

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Tourism and Environmental Laws

1) **Environmental sustainability** – Environmentally, sustainable tourism has a low impact on natural resources, particularly in protected areas. It minimises damage to the environment (flora, fauna, habitats, water, living marine resources, energy use, contamination, etc.) and ideally tries to benefit the environment. Sustainable tourism development that is ecologically and environmentally viable is compatible with the maintenance of essential ecological processes, biological diversity and biological resources. It includes the following principles:

♣ Codes of practice should be established for tourism at all levels
♣ Guidelines for tourism operations, impact assessment and monitoring of cumulative impacts should be established
♣ Formulate national, regional and local tourism policies and development strategies that are consistent with overall objectives of sustainable development
♣ Institute baseline environmental impact assessment studies
♣ Ensure that the design, planning, development and operation of facilities incorporate sustainability principles
♣ Ensure tourism in protected areas, such as national parks, is incorporated into and subject to sound management plans
♣ Monitor and conduct research on the actual impacts of tourism
♣ Identify acceptable behaviour among tourists
♣ Promote responsible tourism behaviour

2) **Social Sustainability** – Socially and culturally, it does not harm the social structure or culture of the community where it is located. Instead it respects local cultures and traditions. It involves stakeholders (individuals, communities, tour operators, government institutions) in all phases of planning, development, and monitoring, and educates stakeholders about their roles. Socially and culturally sustainable tourism aims to increase people’s control over their lives and is compatible with the culture and values of those affected and strengthens the community identity. Its principles are:

♣ Tourism should be initiated with the help of broad based community input
♣ Education and training programmes to improve and manage heritage and natural resources should be established
♣ Conserve cultural diversity
♣ Respect land and property rights of traditional inhabitants
Development of Sustainable Tourism Concept

- Guarantee the protection of nature, local and the indigenous cultures and especially traditional knowledge
- Work actively with indigenous leaders and minority groups to insure that indigenous cultures and communities are depicted accurately and with respect
- Strengthen, nurture and encourage the community’s ability to maintain and use traditional skills
- Educate tourists about desirable and acceptable behaviour
- Educate the tourism industry about desirable and acceptable behaviour

3) **Economic sustainability** – Economically, it contributes to the economic well being of the community, generating sustainable and equitable income for local communities and as many other stakeholders as possible. It benefits owners, employees and neighbours. It does not simply begin and then rapidly die because of poor business practices. Economic sustainability is profitable in both the immediate and long term in following ways:

- Form partnerships throughout the entire supply chain from micro-sized local businesses to multinational organisations
- Use internationally approved and reviewed guidelines for training and certification
- Promote among clients an ethical and environmentally conscious behaviour
- Diversify the products by developing a wide range of tourist activities
- Contribute some of the income generated to assist in training, ethical marketing and product development
- Provide financial incentives for businesses to adopt sustainability principles

Apart from the three above mentioned approaches, there is a fourth approach that is now fast becoming a part of the Sustainable Tourism approach. This approach is called Local Sustainability.

Local sustainability - that is designed to benefit local communities and generate/retain income in those communities

- The community should maintain control over tourism development
- Tourism should provide quality employment to community residents
- Encourage businesses to minimise negative effects on local communities and contribute positively to them
- Ensure an equitable distribution of financial benefits throughout the entire supply chain
Tourism and Environmental Laws

- Provide financial incentives for local businesses to enter tourism
- Improve local human resource capacity

A tourism enterprise that meets these three principles will “do well by doing good”. This means running a tourism business in such a way that it does not destroy natural, cultural, or economic resources, but rather encourages an appreciation of the very resources that tourism is dependent on. A business that is run on these three principles can enhance conservation of natural resources, bring appreciation to cultural values, bring revenue into the community, and be profitable.

Apart from such triple bottom approach that is applicable to the industry players, sustainable tourism model expects the tourists as well as the local residents to play an active part in sustaining the tourism. Some Do’s and Don’ts identified for the tourists and local residents in sustainable tourism model, so that they are able to name the following values underlying the charter are:

- Harmony, Peace and mutual respect towards local community by tourists and vice versa
- Honesty in dealings
- Trust and good faith
- Dignity and privacy
- Culture sensitivity
- Gender sensitivity
- Conservation and optimum utilisation of local resources
- Protection of local environment
- Harming cultural and heritage properties should not be done
- Follow the local laws and conventions

To understand the principles behind sustainable tourism development, it is first necessary to appreciate how the idea evolved. During the 1980s, it became apparent that major global environmental changes were occurring suddenly and silently and that these changes had not been predicted by scientists. The world also became more aware that there was an element of uncertainty and risk in relation to the effect of a range of human activities on global environments. To rectify these problems, fundamental changes were required in our style of living.
The concept of sustainable development came from this realisation. It was first mentioned in 1987 in a report published by the World Commission on Environment and Development. It defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

The report identified a number of key principles including:

♣ Inter-generational equity – meaning that the range of activities and the scope of ecological diversity available to future generations is at least as broad as that felt by current ones.

♣ Intra-generational equity, social justice and poverty alleviation – improving the well-being of all residents in a community, and not just benefiting the powerful or the rich.

♣ Public participation – which means that we all share a role to play and that communities need to collectively make decisions rather than having them imposed by external forces.

♣ Environmental protection as an integral component of economic development – economic development without environmental conservation is no longer acceptable.

♣ Dealing cautiously with risk and uncertainty – in situations where environmental impacts of activities are not known, the preferred option is to proceed cautiously or not at all, until the likely impacts can be determined.

Some additional elements have been included:

♣ use of renewable resources at a rate equal to or less than the natural rate of regeneration

♣ accountability – about setting clear standards, ensuring monitoring and enforcement.

In principle, most people support sustainability. However, in practice it has been difficult to achieve because it is so broad and complex. Indeed, two different ideologies have emerged:

♣ One arguing for economic sustainability as the dominant characteristic (i.e. the status quo),

♣ And the other arguing ecological sustainability as the dominant feature.

Yet, if you consider sustainability in the context of a strategy both economic and ecological considerations are needed, for you cannot have true sustainability with addressing both concerns.

Tourism is most ideally suited to adopt sustainability as a guiding philosophy. There are many reasons:

♣ apart from transport, tourism does not consume additional non-renewal resources
Tourism and Environmental Laws

- a community’s resources, its culture, traditions, shops, leisure facilities, etc represent the core resources base for tourism
- tourism use of resources, both natural and cultural, should be non consumptive, making them renewable
- tourism represents one of the few economic opportunities available to remote communities
- tourism provides a real opportunities to reduce poverty, create employment for disadvantaged people and stimulate regional development
- tourism has proven to revitalise cultures and traditions
- tourism can provide an economic incentive to conserve natural and cultural assets
- tourism has been shown to foster greater understanding between peoples and a greater global consciousness Sustainable tourism is really an issue of how best to encourage tourism while minimising its costs.

3. ACTORS IN THE SUSTAINABLE TOURISM AND BARRIERS IN COORDINATION

Sustainable tourism development means the optimal use of social, natural, cultural and financial resources for national development on an equitable and self-sustaining basis to provide a unique visitor experience and an improved quality of life through partnerships among government, the private sector and communities. Making tourism more sustainable means taking social, natural, cultural and financial impacts as well as local needs into account in the planning, development and operation of tourism. It is a continual process of improvement and one which applies equally to tourism in cities, resorts, rural and coastal areas, mountains, and protected areas. It can apply to all forms of business and leisure tourism.

Sustainable tourism has identified how the tourism industry can contribute to overall sustainable development and continue to provide high quality, low impact experiences. Sustainable tourism is built around four pillars of tourism, environmental sustainability, social sustainability, economic sustainability and local sustainability.

All four of these elements must be addressed if we are to achieve sustainable tourism.

For somebody from a business school background or who is a tourism service provider, sustainability can be considered as a strategy, which moves it away from the abstract into the practical. Strategies are designed to move an organisation or destination from a current less favoured position to a more favoured future position. In doing so, strategic decisions are based on vision, the identification of shared goals and leadership.
Actors are stakeholders in a sustainable tourism model play a major role in the development and maintenance of a successful sustainable tourism model. There are basically six sets of actors in sustainable tourism model, namely:

I) Public Sector, including supra-governmental bodies such as national governments, local authorities, ministries and quasi-governmental organisations
II) Tourism industry and business as well as service providers
III) Voluntary sector organisations, notably NGOs, pressure groups and professional bodies
IV) Host community
V) Media
VI) Tourists

The relevant actors will vary across sites. For example, local communities may be present at some sites, but not others. Likewise, businesses may play a large role at some sites, but little or no role at others. A common phenomenon is that ecotourism can generate both symbiosis and conflict between the actors. The potential for sustainable tourism to result in symbiosis between conservation (e.g., natural areas) and development (e.g., businesses) has been widely touted, but the potential for conflict should not be ignored. For example, natural area managers and sustainable tourism businesses, especially operating in the field of ecotourism, have a shared interest in conserving the natural environment. However, there often is conflict regarding the point at which tourism activity jeopardizes this conservation.

Conflicts between actors can be mediated to a large extent by following Sustainable Tourism Standards. Sustainable tourism standards address a wide range of issues, including social accountability, cultural, environmental, economic, quality and destination resource protection concerns. Currently, environmental criteria are often more developed than social criteria, with more accepted indicators, practical methods for benchmarking and accepted methodologies for measurement and monitoring. This is the result of most tourism standards being developed for destinations with an emphasis on reducing operating costs through eco-savings. Standards for developing countries are slowly being developed and include a wider range of sustainability issues.

There are several proposals to internationalise tourism standards, but none of them is at a sufficiently advanced stage of development and consultation of proposals that would guarantee the necessary consensus to make it a viable international sustainable tourism standard. UNWTO’s Global Code of Ethics for Tourism has reached the highest consensus, yet it has no mechanisms to translate this code for specific business units, nor to assess compliance. The International Organisation for Standardisation (ISO), through its Committee on Consumer Policy (COPOLCO), is considering the feasibility of tourism standards, which
Tourism and Environmental Laws

might change the nature of international tourism standards. At the same time a few certification programmes are spreading rapidly and entering developing countries (the most notable expansion being the Certificate of Sustainable Tourism in Latin America) which will provide a platform to assess the benefits of the internationalisation of standards for developing countries.

The authors recommend that organisations setting sustainable tourism standards should map out their standards against the Global Code of Ethics for Tourism and transfer its guidelines into certification criteria and measurable indicators. These organisations should also consider compliance to elements of relevant ISO standards for standard setting, certification, accreditation and ecolabelling. However, as ISO does not sufficiently address the relationship of standards-related organisations to all stakeholders in an economic process, some of its requirements are not relevant and still other important issues are absent. Similarly, although aspects of the Technical Barriers to Trade (TBT) Code of Best Practice and findings from its 2nd Triennial Review are helpful, these were not developed in relation to GATS, nor with the input of stakeholders in certification, from civil society.

Sustainable tourism standards are acting both as facilitators of and barriers to trade, in different situations. By increasing the availability of credible information on their social and environmental performance some certified tourism services are increasing their trade. However, certifications are geographically concentrated in the developed countries.

Looking at trades other than tourism, the TBT Committee recognised a problem with developing-country access to standards-related services. This is an issue under GATS Articles IV (Increasing participation of developing countries) and IX (Business practices), and therefore the authors recommend developed countries make additional commitments to address this problem.

Standards might be regarded by some as a ‘barrier’ to trade, but in ways that are essential to their veracity as sustainability standards. For example, they often limit the exploitation of a resource, encourage the purchase of locally produced goods, encourage local employment, protect indigenous people’s access to resources, and in some cases limit the repatriation of profits. Certain interpretations of GATS might lead to disputes on these issues, although there are also provisions in the agreement which confirm the legitimacy of governmental measures in support of such standards. If developed and agreed, an international standard for sustainable tourism could also act both as a facilitator of and barrier to trade, depending on its form and implementation.

Few cases have been brought forward to a dispute panel and governments have few references from which to take decisions; hence the recommendation by the authors to proceed with caution in making further liberalisation commitments and seek to maintain their policy space to support the uptake of sustainable tourism standards in the future.
However, till such universal standards are implemented, there still has to be a support of some kind of cooperation tool among the different actors in sustainable tourism. It is of utmost importance to form partnerships among tourism actors. Such partnerships not only promote the setting of balanced objectives, but also promote achievement of sustainable objectives through utilisation of the varied skills and contributions each actor can make. For example, government clearly has an important role in ecotourism, but the private sector and NGOs offer skills, flexibility, and political independence that government agencies and local communities may lack. Moreover, the private sector and NGOs may be more efficient in achieving objectives, even in such traditional public sector activities as conveying the importance of conservation to surrounding communities.

Despite significant barriers to forming and maintaining such partnerships, the fact that they can provide substantial benefits but currently are relatively rare leads many observers to expect a future increase in partnerships.

Though the roles of actors within a partnership will vary across sites, there are some broad categories of roles that each sector might take on. The public sector role in ecotourism typically is to:

♣ provide environmental protection (the natural area itself);
♣ provide infrastructure, such as roads and airports;
♣ provide security and enforcement;
♣ monitor and control impacts;
♣ allocate access;
♣ provide information, such as through interpretive programmes;
♣ resolve conflicts.

The private sector role in ecotourism typically is to:

♣ provide accommodation and food;
♣ provide transportation, such as busses and airlines;
♣ provide information, such as guides and brochures;
♣ promote sites to potential visitors; and
♣ provide consumer products, such as souvenirs.

Various types of partnerships might be pursued, with national or regional ecotourism councils as one option. A specific example of public-private partnership is the formation of various

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Tourism and Environmental Laws

State Tourism Boards in India, with representation from both the private and public sectors. Examples from other countries include Nepal Tourism Board that also follows a PPP model. An example of inter-agency cooperation is the Joint Committee on Nature Attraction Utilisation in Indonesia, with representation by the Directorate General of Tourism and the Directorate General of Forest Protection and Nature Conservation (Nababan and Aliadi 1993). Joint marketing between natural areas, regional/national tourism agencies, and ecotourism businesses is another example of opportunities for partnerships to achieve mutual objectives in a cost-effective manner.

More extensive partnership opportunities also exist and likely will expand in the future. These include co-management of natural areas (e.g., government-NGO and government-local communities) and joint ventures between the private sector and local communities (Christ Forthcoming; Pfister and Jubenville Forthcoming).

Depending on the type and effectiveness of the partnership, it can be an important means for achieving ecotourism and natural area management objectives more efficiently or in ways that individual actors alone simply cannot do.

4. The Dimensions of Sustainable Tourism

In reviewing the first five years’ implementation of Agenda 21 in 1997 at its nineteenth Special Session, the General Assembly indicated the need to give further consideration to the importance of tourism in the context of Agenda 21. In 2002, the World Summit on Sustainable Development in Johannesburg addressed sustainable tourism in Chapter IV, paragraph 43 of the Johannesburg Plan of Implementation.

Tourism that focuses on natural environments is a large and growing part of the tourism industry. While it can contribute in a positive manner to socio-economic development and environmental protection, uncontrolled tourism growth can also cause environmental degradation, destruction of fragile ecosystems, and social and cultural conflict, undermining the basis of tourism.

The General Assembly in 1998 proclaimed 2002 as the International Year of Ecotourism (A/RES/53/200), reaffirming Economic and Social Council resolution 1998/40, of 30 July 1998. As announced at the Johannesburg Summit, the World Tourism Organisation, in collaboration with UNCTAD, launched the Sustainable Tourism-Eliminating Poverty (ST-EP) initiative to develop sustainable tourism as a force for poverty alleviation. The UN Commission on Sustainable Development (CSD) last reviewed the issue of sustainable tourism in 2001, when it was acting as the Preparatory Committee for the Johannesburg Summit. In its current work programme, the CSD will next take up the issue of sustainable development in its fifth cycle, in 2012 and 2013.
There are many ways to define sustainable tourism and below are three such attempts:

1) United Nations Environmental Programme – Sustainability principles refer to the environmental, economic, and socio-cultural aspects of tourism development, and a suitable balance must be established between these three dimensions to guarantee its long-term sustainability. Thus, sustainable tourism should: Make optimal use of environmental resources that constitute a key element in tourism development, maintaining essential ecological processes and helping to conserve natural heritage and biodiversity. Respect the socio-cultural authenticity of host communities, conserve their built and living cultural heritage and traditional values and contribute to inter-cultural understanding and tolerance. Ensure viable, long-term economic operations, providing socio-economic benefits to all stakeholders that are fairly distributed, including stable employment and income-earning opportunities and social services to host communities, and contributing to poverty alleviation.

2) ICOMOS (International Council of Monuments and Sites) – Sustainable Tourism refers to a level of tourism activity that can be maintained over the long term because it results in a net benefit for the social, economic, natural and cultural environments of the area in which it takes place.

3) John Beech and Simon Chadwick – Sustainable tourism - Tourism that has minimal impact on the environment and culture of the host community.

Some terms related to Sustainable Tourism:

♠ Responsible Tourism – Responsible tourism is the closest definition to sustainable tourism; however it tends to refer to the consumers’ choice of destination and mode of transport based on their ethical, political and racial sensitivities as well as being concerned for the environment and local culture.

♠ Green Tourism – Historically the definition of this term has been travel which is environmentally friendly or benign that in general does not concern itself with cultural or economic elements of the destination. Current uses of the term are becoming broader to incorporate full sustainable tourism principles.

♠ Ethical Tourism – Ethical tourism has evolved as a term when one considers travelling to, or developing tourism in a destination where ethical issues are the key driver, e.g. social injustice, human rights, animal welfare or the environment. Ethical tourism is geared towards encouraging both the consumer and industry to avoid participation in activities that contribute or support negative ethical issues.

♠ Ecotourism – Ecotourism, also known as ecological tourism, is a subset of sustainable tourism which focuses on ecology. Ecotourism tends to be encountered in destinations
Tourism and Environmental Laws

where flora, fauna and cultural heritage are the primary attractions. The industry actively works towards conserving or improving the natural and cultural heritage through managing its own operations to help conserve the environment, organising conservation projects, offering volunteering and educating visitors.

Sustainable tourism in its purest sense, is an industry which attempts to make a low impact on the environment and local culture, while helping to generate income, employment, and the conservation of local ecosystems. It is responsible tourism that is both ecologically and culturally sensitive. Thus, Sustainable tourism activities have minimal impact on the environment and culture of the host community.

Considering that the tourism sector is touted as the largest economic sector in terms of the number of people employed or other criteria, its contribution to job creation and income generation for local communities is a very important element for overall development. This is especially the case for developing countries and households with lower-incomes. Tourism policies with poverty reduction focus provide an attractive package for local governments to achieve increased job creation and income generation goals. How can the tourism sector contribute to poverty reduction goals? What are the points of intersection between poverty reduction and tourism development goals that have to be targetted for policy development? To answer such questions, one of the basic essentials is to understand the concept of Ecological footprint.

Researchers Bill Rees and Mathis Wackernagel have developed the ecological footprint concept – the area of land needed to provide the necessary resources and absorb the wastes generated by a community – to highlight the impact of cities on the environment. London, UK serves as a good example: the ecological footprint of that city is 120 times the area of the city itself. They estimate that a typical North American city with a population of 650,000 would require 30,000 square kilometers of land – an area roughly the size of Vancouver Island, Canada – to meet domestic needs alone without even including the environmental demands of industry. In comparison, a similar size city in India would require 2,800 square kilometers. Planners are faced with enormous challenges in providing a secure environment that meets the needs of both people and natural systems. And cities are not self-contained entities. Their problems and solutions are part of and impinge on those in other jurisdictions, putting even more pressure on already over-burdened local governments.

Since the United Nations Conference on Environment and Development in 1992, population growth and increases in consumption in many parts of the world have increased humanity’s ecological burden on the planet, even though there has not been an equal corresponding increase in the Earth’s bounty of natural resources. As stated in WWF: Living Planet Report 2000, total global consumption of natural resources has risen by fifty percent since 1970, while Earth’s natural wealth has decreased by over thirty per cent. At the same time, although
Development of Sustainable Tourism Concept

global environmental problems are typically considered part of national and international decision-making, it is now much more important to consider the environmental impacts of urban areas, because a rapidly growing proportion of the world’s population lives in cities. According to the United Nations Population Division, 2.9 billion people or 47 per cent of the earth’s population lived in urban areas in 2000. In 2007, it is projected that the global urbanisation rate will reach 50 per cent, and in 2030 it should reach 60 per cent. In other words, the world’s population could increase by 2.2 billion people in 2030, with 2.1 billion of these people living in cities. Nearly all of this additional population growth is expected to occur in developing nations, and practically all of it will be concentrated in urban areas. As a response to this, municipal decision-makers must be able to measure urban and regional ecological impacts to inform environmental policy at the local level. One way to do this is through ecological footprint analysis, which was invented in 1992 by Dr. William Rees and Mathis Wackernagel at the University of British Columbia. As an introductory report, this guide focuses on the applicability of EF analysis for cities and regions, and does not explain footprint calculation methodologies in detail.

What is an Ecological Footprint? – All of the resources which people use for their daily needs and activities come from somewhere, even if not from their immediate surroundings. Food, electricity, and other basic amenities for survival must be produced within the confines of nature, using raw natural resources. Based on this relationship between humanity and the biosphere, an ecological footprint is a measurement of the land area required to sustain a population of any size. Under prevailing technology, it measures the amount of arable land and aquatic resources that must be used to continuously sustain a population, based on its consumption levels at a given point in time. To the fullest extent possible, this measurement incorporates water and energy use, uses of land for infrastructure and different forms of agriculture, forests, and all other forms of energy and material “inputs” that people require in their day-to-day lives. It also accounts for the land area required for waste assimilation.

Scales of Measurement – Footprints can be measured at an individual level, or for cities, regions, countries, or the entire planet. Through specialised adjustments, EF analysis can also be used for specific activities, or to measure the ecological requirements of producing specific goods or services. Analysts examine the quantity and different types of natural and manufactured materials and services used, and then use a variety of calculations to convert this into a land area. Footprints indicate how much “nature” is available for a defined population to use, compared to how much it needs to maintain its current activities. Obviously, the size of a footprint will vary depending on the volume and different types of natural resources consumed by a population, which will in turn depend on lifestyle choices, income levels, and technology. Therefore, footprints provide compelling evidence of the impacts of consumption.
5. RESPONSIBLE TOURISM DECLARATION

Text of 2nd International Conference on Responsible Tourism in Destinations – The Incredible India 2nd International Conference on Responsible Tourism in Destinations organised by Kerala Tourism and the ICRT India. The 2nd International Conference on Responsible Tourism in Destinations was attended by 503 delegates from 29 countries. The delegates came with a broad range of experience and expertise from diverse cultures, environments and backgrounds. There were delegates from international organisations, national and local government, local communities, airlines, hoteliers, tour operators, service providers, protected areas, NGOs, academia, architects and planners, the media and consultants. We came with a wide range of experiences from different environments, cultures and tourism contexts and we have shared and discussed our different experiences and approaches over four days. We recognise the commitments made by policymakers in Kerala who have committed to Responsible Tourism and pledged to take forward the concept of Responsible Tourism into practice, focusing on local economy, well being, local culture and environment. One of the purposes of responsible tourism is that the benefits of tourism are equitably accessed and distributed. Recognising that it takes time to achieve change through multi-stakeholder partnerships, particularly if local communities are to be empowered to participate in the process; and that due credit should be given for effort and progress. We encourage all stakeholders to share our vision for Responsible Tourism, to recognise that the journey is worthwhile and that it is possible to consistently create a better approach to tourism where together, local communities, tourism enterprises, destinations, tourists, and governments can all benefit.

- Recommendations for Action
  - Education and Learning
  - Campaigning and Awareness Raising
  - Media
  - Empowerment
  - Taking Responsibility for Sustainable Local Social and Economic Development
  - Governance
  - Multi-stakeholder Processes
  - Partnerships
  - Community-based Tourism
  - Markets
Achieving Responsible Tourism in Destinations

We came together at the invitation of Kerala Tourism and the ICRT India in Kochi to discuss progress in achieving the principles of Responsible Tourism, to share experience and to learn from each other about how to achieve the aspirations of Responsible Tourism in Destinations and to identify good practices. Our deliberations focused on the issues which arise in the management of tourism in destinations where domestic and international visitors, tourism enterprises and local communities meet and interact. It is at this local level that the interactions between tourists and local and indigenous people; and between local communities and tourism businesses need to be understood. Recognising that all forms of tourism should be more responsible, we call upon all the stakeholders to play their part in achieving the aspiration. Aware of the UN World Tourism Organisation’s Global Code of Ethics and wanting to encourage all stakeholders to comply. Recognising that Responsible Tourism is not a product; it is an approach and which can be used by travellers and holidaymakers, tour operators, accommodation and transport providers, visitor attraction managers, planning authorities, national, regional/provincial and local government. An integrated approach is required, involving many stakeholders in any place or space which attracts tourists. Recognising that tourism takes place in communities, natural and cultural heritage sites and environments where people live and work; and that tourism is only one of the activities which needs to be managed in order to ensure sustainable communities. Recognising the priority expressed in the Cape Town Declaration call for action to “to create better places for people to live in and for people to visit.” Recognising that the currencies of travel and tourism are those of free time and of money and that when people are on holiday or travelling on business they are generally consuming conspicuously; and that this inequality can give rise to conflict. We endorse the aspiration of the language of hosts and guests and the greater degree of equality it implies. While we recognise the role of the industry, we must be conscious that the power relationship generally significantly favours the industry and the visitor. Recognising that domestic and international tourism often makes visible inequalities between producers and consumers which becomes more apparent when the consumer travels to the factory to consume the product. Economic inequality does not necessarily have to be compounded by expressions of social superiority evidenced by a lack
Tourism and Environmental Laws

of respect. The ethic of mutual respect and equity is fundamental to Responsible Tourism. Aware that tourism reflects the economic and political relationships which empower consumers in our globalised world we recognise that tourism can be managed to have more positive impacts and less negative ones. Recognising that tourism can be a tool to conserve and enhance local natural and cultural heritage. Recognising the principles of the Cape Town Declaration which defined Responsible Tourism as having the following characteristics:

♣ minimises negative economic, environmental and social impacts;
♣ generates greater economic benefits for local people and enhances the well-being of host communities, improves working conditions and access to the industry;
♣ involves local people in decisions that affect their lives and life chances;
♣ makes positive contributions to the conservation of natural and cultural heritage, to the maintenance of the world’s diversity;
♣ provides more enjoyable experiences for tourists through more meaningful connections with local people, and a greater understanding of local cultural, social and environmental issues;
♣ provides access for physically challenged people; and
♣ is culturally sensitive, engenders respect between tourists and hosts, and builds local pride and confidence.

Recognising that each place, each destination will identify and prioritise different issues and that this is something which should be celebrated, reflecting as it does our world’s diversity of cultures and environment. Local communities need to be empowered to exercise control over the forms of tourism that they wish to see developed in their communities, and even to their right to say ‘no’ to tourism. Recognising that in India, policy on Responsible Tourism is evolving and reflecting on the experience of the Responsible Tourism policies/practises already being implemented in some parts of India, South Africa, Sri Lanka and The Gambia in pursuing Responsible Tourism strategies; and the experience of Sri Lanka and The Gambia in developing formal Responsible Tourism Partnerships involving formal on going multi-stakeholder processes. The conference has also drawn on the experience of 29 countries which participated in the conference. Recognising that in order to achieve the necessary agreement on issues and priorities we need to rely more on reliable empirical evidence to define issues and their scale, in this way it is possible to build multi-stakeholder partnerships to address the issues and achieve change. Recognising that the issue of whose interests take priority is a political issue. Aware of the need to focus on the contribution of tourism to the local economy and that increases in domestic and international arrivals can contribute to this, recognising that governments need to focus more on locally captured
Development of Sustainable Tourism Concept

yield and the contribution of tourism as part of a local sustainable development strategy. Recognising the role of government in leading an open and inclusive multi-stakeholder process to ensure economic and social development whilst conserving the environment. Recognising that although the impacts of travel and tourism need to be managed locally in the destination the form of travel to and fro between home and destination is now of major importance. Aware that there is a global consensus amongst scientists from a wide range of disciplines that Green House Gases are contributing to climate change which is having serious impacts on our environment and that these negative impacts fall disproportionately on the poor in developing countries, we accept that reducing carbon pollution from the tourism industry is a priority and urge governments, tourism businesses, the airlines and other forms of transport, and consumers to prioritise carbon reduction, reducing the consumption of fossil fuels, increasing, energy efficiency and the use of renewable energy. Aware that most communities face increasing water scarcity, unsustainable waste generation and management, serious energy and fuel constraints and biodiversity loss. Recognising that tourism is increasingly challenged to demonstrate its positive impacts on livelihoods, social and economic development and conservation. In addition to ensuring that tourism does not cause problems to local communities, increasingly the tourism industry is called upon to respond to critical social problems and to act in the social interest contributing to social justice. Recognising that generally in the destination no operator or originating market predominates and that this is desirable, the destination does not, and should not, belong to the originating markets domestic or international. In many destinations the consumer and the originating market industry is more powerful than the local community and the local tourism industry and that this can have undesirable consequences with serious negative impacts. Recognising the importance of World Travel Market’s World Responsible Tourism Day and its adoption of the Cape Town Declaration in 2002. One of the key challenges facing Responsible Tourism is to engage with the mainstream industry. Whilst there has been some success in some originating markets and in some destinations there is still a long way to go in engaging the industry, tour operators in destinations and source markets (whether domestic or international), accommodation providers natural and cultural heritage sites and other attractions and tourism service providers, to accept and shoulder their responsibility to actively contribute to achieving sustainability. Recognising that whilst we need to be aware of the complexity of the interactions of tourism in a destination, stakeholders and local priorities need to be identified, an agenda for change needs to be agreed and implementation needs to be commenced. It is important to begin to manage tourism more sustainably in accord with local priorities; we recognise that not everything that may be desirable can be achieved immediately. Recognising the experience, knowledge and skills of communities, we can listen and learn from them; there are no blueprints — there are only local solutions although we can learn from the experiences of others. We have used the principles of the Cape Town Declaration during our visits to local initiatives to explore the
Tourism and Environmental Laws

approaches and methods which contribute to the successful realisation of the aspirations of Responsible Tourism and the ways in which obstacles to progress can be overcome. This experience combined with our diverse experiences of efforts to deliver Responsible Tourism has informed this Kerala Declaration which contains a distillation of the lessons we have learnt about how to achieve Responsible Tourism in Destinations. Aware of the Guiding Principles for economic, social and environmental responsibility in the Cape Town Declaration the Kerala Declaration focuses on process and approaches to implementation.

RECOMMENDATIONS FOR ACTION

Education and Learning

Education is required at all levels, initial, secondary, community and professional - continuing professional development education is more likely to have an immediate impact on the sustainable management of tourism in destinations. Tourism and the ideas of Responsible Tourism should be included in the primary curriculum to foster social inclusion, discourage dependency and enable people to engage in the management of tourism impacts. Use education to build the transferable technical capacity of all stakeholders Train guides as interpreters aware of their responsibilities to assist the process of Responsible Tourism management and to maximise the positive contribution and minimise negative impacts while enhancing the visitor experience. Encourage the development of new tourism experiences which facilitate socially and economically positive host – guest encounters. Undertake learning needs analysis and capacity building for communities, NGOs, the private sector and government staff. Educate tourists, the intermediaries in the transit route, and generating markets on local socio-cultural, economic and environmental issues in the market and the destination; likewise educating the communities on the cultures of the visitors. Research and resource materials need to be available in each country pursuing Responsible Tourism.

Campaigning and Awareness Raising

Businesses need to be encouraged to recognise that they can do well by doing good. There is a business case to be made focused on a number of issues:

- Cost savings
- Enlightened self interest in preserving the product
- Staff motivation and retention
- Responsibility to stakeholders – in particular to employees and communities
- Changes in the investment climate which are moving to favour socially responsible investments in part to ensure the maintenance of brand value.
- License to operate
Product enhancement through opportunities for meaningful socio-cultural engagement.

Customer expectation, there is increasing consumer demand for “richer” engagement with destinations and the communities who live there and an expectation that the industry will take responsibility for minimising its negative, and maximising its positive impacts. There is market advantage to be gained through referrals and repeat business. In destinations campaigning may be necessary to raise awareness amongst all stakeholders and encourage change.

Media

We urge the media to exercise more responsibility in the way in which they portray tourism destinations, to avoid raising false expectations and to provide balanced and fair reporting. We urge the media to communicate the ideas of Responsible Tourism and the enhanced visitor experiences it can provide and to promote Responsible Tourism enterprises. We ask that the media exercise independent critical judgment when reporting on companies and destinations and address the Responsible Tourism agenda.

Empowerment

Recognise the importance of strengthening the role of local communities in decision making about tourism development through their existing civil society structures and local governance processes. Encourage local government scrutiny of joint ventures, co-operatives and public private sector partnerships, it may be appropriate for local government to assist communities in maintaining some control over the forms of tourism development in their area. Recognise that communities are not homogenous and that equity, power and gender issues need to be addressed.

Taking Responsibility for Sustainable Local Social and Economic Development

Responsible Tourism now has to focus on the economic participation of local people as direct owners in the business of tourism not just as beneficiaries of charity. Tourism has to contribute to socio-economic development by supporting the conservation of natural and cultural heritage. Tourism has to provide opportunities for employment at the community level. Government and tourism enterprises can make a significant contribution by changing their procurement practices and supporting local entrepreneurs to develop the quality and quantity of their goods and services to meet market demands. Enclave tourism raises particular issues of market access and control which need to be addressed. Tourism needs to prove its link with poverty reduction rather than relying on the concept of trickledown. Government and development agencies need to address the challenge of spreading the benefits of tourism geographically and to the poor. Market access for micro and small enterprises through the removal of barriers can achieve immediate results through increasing the discretionary spend
Tourism and Environmental Laws

by tourists to informal sector traders and micro-enterprises. Access to viable markets is essential for local micro-enterprises to flourish and workers rights need to be addressed. Through their supply chain tourism businesses can increase their linkages to the local economy and to economically poor producers. Mentoring partnerships can assist in product development and marketing of micro-enterprise products. Provide opportunities for tourists to support communities in a meaningful and dignified way, with responsible and transparent mechanisms for handling donations of finance and resources.

Governance

Governance is a major challenge often central to engaging all the stakeholders to achieve change. Local government has overall responsibility to bring together the efforts of destination stakeholders through dialogue in multi-stakeholder forums to establish responsible destinations rather than pockets of responsibility in destinations. “Joined-up government”, a “whole of government approach”, going “beyond the silo” are expressions used in different societies to make the point that the management of tourism cannot be achieved by the tourism department working alone. Planning control, highways, environmental management, police and a host of other government agencies at the national and local government need to be encouraged to play their role in managing tourism. All relevant departments in national and local government need to exercise their responsibility for ensuring the formulation and implementation of regulations. Government plays a key role in facilitating the balance of competition and co-operation: businesses need to co-operate to attract tourists to the destination and compete for their bookings and business. Government should support and facilitate the community to engage in tourism services, integrating equity and environmental concerns. Governments in originating countries have a responsibility to issue well founded travel advisories and not unnecessarily to damage local tourism industries. Care needs to be taken to avoid regulation causing corruption or excluding small businesses and communities. National and local governments should implement public health policy programmes in view of the impacts which communicable diseases may have on local communities and tourism.

Multi-stakeholder Processes

Co-operation and competition between different groups in the informal sector and between the informal and formal sectors is required. Multi-stakeholder processes and co-operation within a shared undertaking to take and exercise responsibility can achieve rapid and significant change. Avoid fragmentation and parallel initiatives, manage and balance co-operation and competition. Ensure that all stakeholders are engaged. Recognise that different stakeholders have particular but interdependent needs and responsibilities. It is a sign of responsibility that you engage with those who question you. Agree implementation plans -
short lists, success in implementation breeds success. The processes of change and management need to be systematised.

**Partnerships**

Responsible Tourism can only be achieved by government, local communities and businesses cooperating on practical initiatives in destinations through stable local level partnerships. Partnerships need to be based on transparency, mutual respect and shared risk taking, ensure clarity about roles and expectations. Build long term partnerships with clear, fair and realistic expectations on all sides. Patience and persistence are required, proceed with wisdom and hope.

**Community-based Tourism**

In considering proposals for community-based tourism development there needs to be more focus on business planning and administration, consumer orientated product development, quality, co-operation with the commercial sector, communication, sales channels, marketing and the management of the interaction between tourists and local people. Robust and transparent financial management systems are needed to empower the community to ensure that earnings are distributed equitably within the community. Communities and individuals need to be empowered to realise a fair price for their goods and services and to have a say in determining how tourism is developed in their community.

**Markets**

There is advantage in developing those market segments which are likely to be resilient and where long term and repeat visiting is likely to result. The experiential trend favours those destinations which are able to facilitate engagement between holiday makers and local communities able to provide the cultural richness. There are increasing opportunities to choose to work with outbound operators, who have a responsible approach. Consider focusing marketing efforts to attract specific groups of tourists predisposed to engage in those activities and pattern of spending which maximise local economic benefit and minimise negative social and environmental impacts. New online travel agencies in destinations and originating markets are providing opportunities for direct sales to travellers and holidaymakers predisposed to purchase experiences with Responsible Tourism characteristics and with the client feedback mechanisms which can assist in driving referrals. The private sector and government should consider providing marketing support to micro- and small-enterprises

**Disability and Inclusion**

Ensure access to built and natural environments and provide information about facilities and access. Provide information and interpretation in ways accessible to those with physical or cognitive disabilities. Create opportunities for employment by those with disabilities in the tourism industry.
Tourism and Environmental Laws

**Commercial Sustainability**

The private sector needs to be actively engaged in developing and sustaining Responsible Tourism in destinations. Institutionalisation and systematisation are essential to sustainability; many projects do not survive the cessation of external financial and technical support. Initiatives need to be mainstreamed and connected to the industry. Responsible Tourism is about changing the way that business is done, recognising that the businesses operate in a competitive market where not all businesses are investing time and other resources in responsible practices. Responsible Tourism businesses can contribute nothing if they are not commercially viable and sustainable. Care should be taken to ensure that communities do not suffer a disproportionate risk given their vulnerability.

**Environmental Sustainability**

Investors in tourism at all levels must build and operate in an ecologically and environmentally sustainable manner. Promote conservation and biodiversity during planning, development and operation of tourism. Adopt a strategic approach to identifying, managing and harvesting natural resources in tourism destinations. Tourism should recognise how tourism contributes to climate change and should minimise its carbon footprint. Tourism enterprises should adopt environmental management systems.

**Monitoring, Measurement and Reporting**

Monitoring, verification and reporting on key local social, economic and environmental issues through locally agreed indicators is central to the management of tourism impacts — measure, verify and report. Transparent and auditable reporting is essential to the integrity and credibility of our work and to establishing benchmarks and targets which enable individual consumers and businesses to make informed choices. In determining who are the responsible tourists and what are the responsible forms of tourism we need to rely more on the measurement of impacts rather than the self-declared motivations of the travellers or the companies concerned. Measurement enables the identification of the specific activities, businesses and tourists who deliver impacts which fulfil the locally defined Responsible Tourism priorities recognising that the tourists who have the lowest environmental impacts may also have low economic yield — choices will need to be made within the framework of local sustainable development priorities. Credible and robust measuring of local impacts assists in ensuring that an holistic assessment is made of the contribution of tourism to sustainable communities and assists in engaging colleagues in local and national government to contribute their expertise and resources to the management of tourism. Local government should establish with all stakeholders to create the systems and processes to document and report the collective impacts of stakeholder action at local destination level.
Awards

Responsible Tourism Awards assist in identifying and rewarding best practice, it is desirable that there should be a variety of awards relevant to all stakeholders Create media interest Raise awareness and drive consumer knowledge and expectation Local awards based on local priorities are as important as national and global awards but avoid too much fragmentation with competing schemes in one destination.

In Conclusion

Aware that there is a danger that Responsible Tourism will be undermined by businesses, communities or governments which use the rhetoric but cannot substantiate the claims. We call upon those committed to the aspirations of Responsible Tourism to challenge those who pay only lip service to the cause and we call on those who are making a difference to report their contribution in a transparent, honest and robust way so that Responsible Tourism can be identified by the consumer and expectations can be raised to the benefit of those who practise Responsible Tourism and to the detriment of those who do not. Five and a half years on from Cape Town we recognise that there has not been as much progress as we would have hoped, nor as much progress as is needed if the travel and tourism industry is to contribute its share of the action required to achieve sustainable development. We call upon those involved in the movement for Responsible Tourism to share their experiences of what works and what does not, to redouble their efforts to use tourism to make better places for people to live in and for people to visit and to engage with people, in industry, in communities and across government to achieve Responsible Tourism in destinations. If you share the aspiration to use tourism to make better places to live in, and better places for people to visit we invite you to join us and to share your experience — together through making many changes we can change for the better the way tourism works in our shrinking world. We commit ourselves to work with others to take responsibility for achieving the economic, social and environmental components of responsible and sustainable tourism. This declaration was agreed in Kochi, Kerala 24 March 2008 and is signed by the co-chairs on behalf of the conference.
UNIT 2  MAJOR LAWS AND POLICIES PERTAINING TO TOURISM

Contents

1. Introduction
2. Legal Definitions of Tourism
3. International Tourism and Ecotourism Policies and Laws
4. Tourism and Ecotourism Policies and Laws
5. Case Studies Pertaining to Tourism and Allied Areas

1. INTRODUCTION

The importance of tourism has increased manifold since World War II and international organisations have developed a growing interest in it. New structures have been established for attempting to guide tourism development on the international scale. However, for most of these international organisations, tourism represents only one area of cooperation among others. For example, international aid agencies and inter-governmental organisations (such as the World Bank, the European Investment Bank and United Nations), through their investment programmes, fund tourism infrastructure and technical expertise in (mainly) developing countries in the same way as they support the development of a number of other industries (such as agriculture and manufacturing).

However, some amount of tourism planning, marketing, and cooperative activities generally take place at the international level through organisations such as the World Tourism Organisation (WTO) and its regional commissions, the International Civil Aviation Organisation (ICAO), some other United Nations agencies and their regional commissions, the International Air Transport Association (IATA), the Pacific Asia Travel Association (PATA), the tourism committee of the Organisation for Economic Cooperation and Development (OECD), etc. The major general purpose global tourism organisation is the WTO. An inter-governmental organisation, the WTO has been designated by the United Nations as the executing agency for United Nations sponsored tourism-related projects. Thus, while the above mentioned organisations play a part in the promotion of tourism in particular world regions, the global policy and planning framework within which the world’s tourism industry operates is essentially shaped by two institutions:

♣ World Tourism Organisation, and
♣ Organisation for Economic Cooperation and Development.

As international organisations, both place an overwhelming emphasis on international tourism issues. Despite the essentially trans-national nature of much tourism activity, very few binding
regulations and agreements concerning tourism services exist at the global level. However, the notable exception in this regard are the civil aviation conventions covering technical cooperation and the safety and well being of airline passengers. These conventions apart, other tourism-related policies at this level tend to be fairly weak in structure and lacking in enforcement. This is due to the almost complete absence of truly global mandatory authorities.

Nevertheless, due to the efforts of a number of inter-governmental agencies, certain international tourism policies in guideline form are slowly emerging on a worldwide scale. Most of these concern issues which transcend purely local or national considerations, such as, freedom of movement and broad environmental matters. PATA, for example, has come out with a code for tour operators and the WTO has made a global code of ethics for Tourism. Many nations seek consultancy from the international bodies for tourism development in areas like destination planning, marketing, taxation policies, human resource development and training, infra-structural development, conservation and so on. Another positive feature of international collaboration is the amount of qualitative research that has come out in various areas – particularly destination case studies.

An important development in the very recent past is the emergence of certain tourism related NGO’s at the international level. For example, the Ecumenical Coalition on Third World Tourism made submissions to the UN Commission on Sustainable Development in April 1999. These submissions added a new dimension to tourism planning, i.e., influencing consumer behaviour towards sustainable tourism development. (see internet www.ecen.org/tourbhav.htm). This Commission admitted that:

However, uncontrolled growth can lead to environmental and social problems that, in addition to harming local residents, in the long term will undermine the profits and jobs created, as idyllic destinations become less desirable according to the U.N.

It further urged governments:

To develop national strategies or master plans for sustainable tourism and to work in partnership with the tourism industry and other major groups, especially at the local level.

2. **Legal Definitions of Tourism**

Legal definitions of some tourism concepts are as follows:

- **Ecotourism**

The term ‘ecotourism’ was coined by a marketing agency that was promoting Costa Rica as a rainforest destination and since then it has been seen as a niche market by the World Tourism Organisation. The three common concepts within ecotourism are natural-based, educational, and sustainable (which includes economic and social criteria). Within these components, both benefits and costs exist, and in some circumstances there is disequilibrium towards greater costs.

-31-
Tourism and Environmental Laws

The World Conservation Union (IUCN) defines ecotourism as: “...environmentally responsible travel and visitation to relatively undisturbed natural areas, in order to enjoy and appreciate nature (and any accompanying cultural features — both past and present) that promotes conservation, has low negative visitor impact, and provides for beneficially active socio-economic involvement of local populations” (IUCN, 1996).

According to the World Tourism Organisation (UNWTO) tourism that involves travelling to relatively undisturbed natural areas with the specified objective of studying, admiring and enjoying the scenery and its wild plants and animals, as well as any existing cultural aspects [both of the past and the present] found in these areas is defined as ecotourism. An optimum number of environment friendly visitor activities, which do not have any serious impact on the ecosystem and the local community and the positive involvement of the local community in maintaining the ecological balance are some of its key elements (UNWTO, 2002).

India is moving towards a system of tourism around protected areas which is primarily community based tourism. Such tourism is low-impact, educational and conserves the ecology and environment while directly benefiting the economic development of local communities.

- Nature Tourism

Nature tourism denotes all tourism directly dependent on the use of natural resources in a relatively undeveloped state, including scenery, topography, water features, vegetation and wildlife. Thus it includes hunting, countryside motorbiking, and white-water rafting, even if the use of the natural resources by the tourist is neither wise nor sustainable. Nature-based tourism includes ecotourism within itself.

Hence, the definition includes activities which ecotourists participate in, can only exist in well-preserved or protected areas. The definition does not mention the responsibility of the ecotourism industry for environmental conservation.

Difference between nature tourism and ecotourism:

Ecotourism is “more exclusively purposeful and focused on the enhancement or maintenance of natural systems”. Ecotourism is defined as “responsible travel to natural areas that conserves the environment and improves the well-being of local people.” While “nature-based tourism” is simply describes travel to natural places, ecotourism is a type of nature-based tourism that benefits local communities and destinations environmentally, culturally and economically. Ecotourism represents a set of principles that have been successfully implemented in various global communities, and are supported by extensive industry and

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academic research. Ecotourism, when properly executed based on these principles, exemplifies the benefits of socially and environmentally sound tourism development.

Like ecotourism, such terms as sustainable tourism and responsible tourism are rooted in the concept of sustainable development, or development that “meets the needs of the present without compromising the ability of the future generations to meet their own needs” (Bruntland Commission, 1987). With this concept in mind, sustainable tourism was defined in the 1992 Agenda 21 for the Travel and Tourism Industry as tourism that “meets the needs of present tourists and host regions while protecting and enhancing opportunities for the future.”

Thus we can distinguish between, for example, traditional tour operators and principled ecotourism operators. The former frequently show no commitment to conservation or natural area management, merely offering clients an opportunity to experience exotic places and people before they change or disappear. Ecotourism operators, on the other hand, have begun to form partnerships with protected area managers and local people, with the intention of contributing to the long-term protection of wildlands and local development, and in the hope of improving mutual understanding between residents and visitors (Wallace, 1992).

Although nature tourism is pretty close to ecotourism, it focuses more on enjoying and respecting the wildlife and the environment without the educational element in ecotourism. Industry consensus agrees ecotourism is more focused on ecological conservation and educating travellers on local environments and natural surroundings, whereas sustainable tourism focuses on travel that has minimal impact on the environment and local communities. Ecotourism is a form of tourism, or a category of vacation similar to beach, adventure, health, or cultural, while the concept of sustainability can be applied to all types of tourism. Nature tourism, on the other hand, simply means visiting natural areas.

- **Sustainable Tourism**

Sustainable tourism, is tourism that is developed and managed in such a way that all tourism activity which in some way focuses on a heritage resource (be it natural or cultural) — can continue indefinitely.\(^3\) In other words it does not detract from efforts to maintain that resource in perpetuity.

- **Alternate Tourism or Appropriate Tourism**

Development, which proposes styles of development for the entire economy and which tend to be more community-responsive, smaller in scale, and ecologically sustainable than traditional modes of development. Thus ecotourism appears to have much in common with the concept of “alternative tourism”.

\(^3\) defined by: Travis and Ceballos-Lascuráin.
Tourism and Environmental Laws

- **Protected Areas**
  Area dedicated primarily to the protection and enjoyment of natural or cultural heritage, to maintenance of biodiversity, and/or to maintenance of ecological life-support services. IUCN (1991)

  The national park has been the most common and well-known type of protected area.

  IUCN’s Commission on National Parks and Protected Areas (CNPPA) serves as the principal source of technical advice on all aspects of the selection, planning and management of protected areas around the world. CNPPA is also specifically responsible for promoting the establishment of a worldwide network of effectively managed terrestrial and marine protected areas.

  **Types of Protected Areas:**
  1) **Strict Nature Reserve:** protected area managed mainly for science
  2) **Wilderness Area:** protected area managed mainly for wilderness protection
  3) **National Park:** protected area managed mainly for ecosystem protection and recreation
  4) **Natural Monument:** protected area managed mainly for conservation of specific natural features
  5) **Habitat/Species Management Area:** protected area managed mainly for conservation through management intervention
  6) **Protected Landscape/Seascape:** protected area managed mainly for landscape/seascape conservation and recreation
  7) **Managed Resource Protected Area:** protected area managed mainly for the sustainable use of natural ecosystems

3. **INTERNATIONAL TOURISM AND ECOTOURISM POLICIES AND LAWS**

  Ecotourism incorporates the aspects of sustainable development within itself. United Nations declared 2002 as the International Year of Ecotourism\(^4\) to encourage the cooperative efforts by Governments and international and regional organisations, as well as non-governmental organisations, to achieve the aims of Agenda 21 in promoting development and the protection of the environment.


Resolution, entitled ‘Promotion of ecotourism for poverty eradication and environment protection’

- Recognises ecotourism as key in the fight against poverty, the protection of the environment and the promotion of sustainable development.
- Recognises the need to consider, respect and promote indigenous cultures, traditions and knowledge in developing ecotourism policy.
- Recognises that “ecotourism creates significant opportunities for the conservation, protection and sustainable use of biodiversity and of natural areas by encouraging local and indigenous communities in host countries and tourists alike to preserve and respect the natural and cultural heritage.
- Underscores the need for national tourism plans to account for market demand and local competitive advantages.
- Encourages Member States to promote investment in ecotourism, in accordance with their national legislation, including creating small and medium-sized enterprises, promoting cooperatives and facilitating access to finance through inclusive financial services such as microcredit initiatives for the poor, local and indigenous communities, in areas of ecotourism potential and rural areas.
- UNWTO has to submit a follow up report to the sixty-ninth session of the UN General Assembly in 2014 on Ecotourism.

Role of UNWTO in promotion Ecotourism

- Encourages the Governments of its Member States to create national and local ecotourism committees, to enhance the potential of ecotourism to improve living standards in developing countries through multi stakeholders participatory processes.
- Working over creating an international accreditation body of sustainable tourism and ecotourism certifiers, determining the most appropriate organisational structure, the necessary steps for its implementation and provide recommendations for accreditation criteria.

1) Establishment of marketing and promotional strategies to attract special interest tourists and to increase consumer awareness.

2) Recommendations on development and implementation of visitor education and interpretation programmes.

Adopted on 21st December 2012 by UN General Assembly.
Parties to the Convention of Biodiversity (CBD):

A strong push for such market based biodiversity conservation approach came from the debate about Biological Diversity and Tourism, which was first initiated in 1999 and led to an extensive discussion about the negative and positive impacts of tourism on biodiversity at the fifth Conference of the Parties of the Biodiversity Convention in 2000.

This led to the formulation of comprehensive guidelines on Biodiversity and Tourism Development which are:

For a sustainable tourism development in any destination requires coordinated policy-making, development planning and management via:

- Baseline information and review;
- Vision and goals;
- Objectives;
- Review of legislation and control measures;
- Impact assessment;
- Impact management and mitigation;
- Decision-making;
- Implementation;
- Monitoring and reporting;
- Adaptive management.

4. Tourism and Ecotourism Policies and Laws

The laws pertaining to ecotourism are current environment and forest laws; there are no laws on tourism at the National or State levels.

Legal frameworks

1) Wild Life (Protection) Act, 1972: The Act permits tourism in protected areas along with scientific research and wildlife photography. However, the character and volume of tourism in protected areas has changed considerably since this law was framed. Hence, there is an urgent need to amendment the Act or at least bring out guidelines that regulate tourism and tourist activity in and around the protected areas.

2) Forest (Conservation) Act, 1980: The law prohibits conversion of forest land for ‘nonforest’ activities (any activity that does not support protection and conservation
of forests). However, ecotourism is being propagated on the notion that it supports conservation and hence is being allowed in forest areas. Although this Act has the potential to regulate ecotourism, there is an urgent need to verify the claim that ecotourism supports conservation in the context of implementation of this Act.

3) Environment (Protection) Act, 1986: Under this Act, there are two very important Notifications that are closely linked to the development of ecotourism — the Coastal Regulation Zone Notification, 1991 and Environmental Impact Notification, 2006. Another notification was issued in 1996 that relate to regulation and management of scheduled areas by Gram Sabhas.

a) Coastal Regulation Zone Notification, 1991: This is an important piece of legislation guiding anthropogenic activities along the coast. However, twenty amendments have been made to the Notification over the years which have diluted and rendered many of the protective clauses meaningless.

The Sunderbans would be a key component of the proposed Integrated Coastal Zone Management Project with an allocation of Rs. 191.20 crore for various initiatives in the region. These include allocations for ecotourism, coastal erosion protection, livelihood improvement of village communities, and construction of cyclone shelters etc. A joint Indo-Bangladesh Forum on Sunderbans is being established to jointly address issues of the region, recognising that the entire Sunderbans region is one ecosystem — 40 per cent of which is in India and the remaining 60 per cent in Bangladesh.


All tourism projects between 200 m-500 m of High Tide Line or at locations with an elevation of more than 1000 meters with investment of more than Rs. 5 crores required environment clearance for the Central Government. When its well proved that tourism industry has a big share in the GDP of India then why this industry is kept out of the EIA procedures is a big question .

c) Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA): is a comprehensive and powerful law that empowers the gram sabha of the Scheduled Areas to address issues that emerge in their day to day lives.
Tourism and Environmental Laws

Policy Framework

The 73rd and 74th Amendments to the Indian Constitution recognise the principle of participatory democracy by creating and empowering local self-government institutions in rural India through panchayats.

The rights of local self government institutions in relation to ecotourism development *inter alia* are:

1) Licensing of tourism projects, buildings and activity areas including the right to reject a licence to the tourism industry if it refuses to cooperate
2) Levy and collect appropriate taxes, duties, tolls and fees
3) Participate in the preparation of plans for economic development and social justice
4) Monitor tourism industry’s exploitation of labour and natural resources and initiate criminal procedures on exploitation of women and children, including child labour by the tourism industry.

These powers are required because in practicality the power play of the ecotourism industry lobby and higher authorities like the tourism, forest departments who have usurped the functions, bypassed the due processes and overruled the decisions of local self government institutions.

Tourism Policy Frameworks in India are as follows:

   The Ministry recognises following cardinal principles for development of ecotourism:
   - It should involve the local community and lead to the overall economic development of the area.
   - It should identify the likely conflicts between resource use for ecotourism and the livelihood of local inhabitants and attempt to minimise such conflicts.
   - The type and scale of ecotourism development should be compatible with the environment and socio-cultural characteristics of the local community; and
   - It should be planned as a part of the overall area development strategy, guided by an integrated land-use plan while avoiding inter-sectoral conflicts and ensuring sectoral integration associated with commensurate expansion of public services.

2) National Biodiversity Strategy and Action Plan: The plan deals with gross impacts of tourism activities in major ecosystems and also focuses on principles in relation to tourism and biodiversity that need to be adopted for the sake of conserving biodiversity.
The Ministry of Environment and Forests – Government of India has rejected the NBSAP on grounds of it being unscientific. The preparation of the NBSAP was one the most participatory processes in Indian history.


Providing Ecotourism services in the PAs in the form of Empowerment, build capacities, and facilitate access to finance and technology, for local people and tribals who have been relocated from PAs.

Priority Investment to be analysed to identify social and environmental issues in the project areas. The key ecotourism issues identified in the EA/SA Study Consultations covering:

- **Gujarat:** the Ecotourism Development activities, if not properly planned and managed will create issues like air, water and noise pollution and biodiversity loss. Various ecotourism activities and socioeconomic development activities may create conflict among the stakeholders.

- **Odisha:** Gram Panchayat/Gram Sabha should be consulted in the identification of services, activities and personnel involved in ecotourism.

4) Ecotourism Policy and Guidelines, 1998: Drawing from international guidelines prepared by tourism industry associations and organisations, the Ecotourism Policy and Guidelines, 1998 issued by the Ministry of Tourism – Government of India represent interests of global industry players. The policy approach is environmental protection for the sake of profits. The policy outlines all ecosystems of India as ecotourism resources and states that these have been well protected and preserved. Where the policy enlists its principles and elaborates operational aspects for key players in the ecotourism business, the role of communities is considerably reduced to protecting environmental resources and providing services to tourism in the role of ‘hosts’.

An environment protected by communities is a resource for ecotourism when tourists experience the natural beauty. Indigenous and local communities become important “stakeholders” thereby becoming subservient to a process where environmental protection is vested from their control and is being pursued for the sake of supporting economic enterprise. What the policy fails to realise is the cross linkages between ecotourism and the social, cultural, economic and institutional processes of indigenous and local communities. Their lives are very closely linked to the environment they live in and their customs and traditions bear strong linkages to it.
5) The States Legislations: States have their own tourism policies and some have even separate ecotourism policies for that purpose. Some are mentioned below:

a) Andaman and Nicobar Islands Tourism Policy: This is a rather simplistic document serving very little of its purpose of providing guidelines and principles for implementation.

b) Chhattisgarh does not have an ecotourism policy. Information on ecotourism sites is provided on the official website which states that one of the major objectives of the policy is to promote economically, culturally and ecologically sustainable tourism in the State; with ecotourism in the three national parks and eleven wildlife sanctuaries.

c) Madhya Pradesh’s Ecotourism Policy, 2007 salient features include development of infrastructure, promotion of lesser known areas, diversification of tourism activities, building awareness and securing local community and private sector participation. Ecotourism activities will include nature camps, eco-friendly accommodation, trekking and nature walks, wildlife viewing and river cruises, adventure sports, angling, herbal ecotourism, urban ecotourism through eco-parks, visitor interpretation centers, and conservation education.

d) Uttarakhand does not have a separate ecotourism policy but the development of ecotourism has been included in the tourism policy of the state, which was formulated in April 2001. The Policy’s vision is to elevate Uttarakhand into a major tourist destination both nationally and internationally and make Uttarakhand “synonymous to tourism”. It wishes to develop this sector in an “eco-friendly manner, with the active participation of the private sector and the local host communities”. And finally, it wishes to develop tourism as a major income earner for the State and as a source of employment to the extent of being “a pivot of the economic and social development in the State”.

Analysis of the Impacts of Ecotourism on Community Governance

a) Local Self Government of Indigenous and Local Communities - Constitutional status and Scheduled Areas

The indigenous peoples are accorded rights under Article 244 (Administration of Scheduled Areas and Tribal Areas) of the Indian Constitution. Article 244 lays down provisions for notifying certain indigenous peoples as Scheduled Tribes and the areas that are occupied by indigenous peoples as Scheduled Areas. The Fifth Schedule of the Indian Constitution provides protection to the indigenous people living in the Scheduled Areas and gives them the right to self-rule. It also re-enforces the rights of the indigenous peoples to territorial integrity and to decide on their own path of development. It disallows the transfer of tribal
lands to non-tribals and corporate entities. The Constitution of India, through its 73rd Amendment, paved the way for a separate and progressive legal and administrative regime for tribal areas for a genuine tribal self-rule. This was done by enactment of the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA).

PESA is a comprehensive and powerful law that empowers the gram sabha of the Scheduled Areas to address issues that emerge in their day to day lives. PESA has attempted to decentralise the control and management of natural resources and several functions of social relevance including adjudication of disputes in accordance with prevalent traditions and customs. It needs to be said that perhaps no law in independent India has talked so eloquently about ‘customary law’, ‘community resources’, village as a community, village people safeguarding their ‘traditions and customs’, and so on. Under PESA, the gram sabha is empowered to approve plans, programmes for social and economic development, identify beneficiaries under poverty alleviation programmes, certify utilisation of funds by gram panchayats, protect common property resources, including minor forest produce and be consulted prior to land acquisition. Some states have given powers to gram sabhas, through standing committees, thereby providing a model for emulation in the PESA areas.

The 73rd and 74th Amendments to the Indian Constitution recognise the principle of participatory democracy by creating and empowering local self-government institutions in rural India through ‘panchayats’ and in urban India through ‘municipalities’. Under the section ‘Empowerment of Institutions of Local Government’, Article 243-G of the Indian Constitution “directs the Central and State government machinery to endow panchayats and municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government with respect to –

♣ The preparation of plans for economic development and social justice

♣ The implementation of schemes for economic development and social justice in relation to matters listed in the Eleventh Schedule for panchayats and Twelfth Schedule [of the Indian Constitution] for all urban local bodies”.

With respect to tourism alone, there are 29 subjects that fall within the purview of rural and urban local self governments, some of which are given below:

1) Acquisition of land for development projects; rehabilitation and resettlement of persons affected by any projects undertaken in Scheduled Areas

2) Regulation of land use and construction of buildings

3) Regulation of use of minor forest produce

4) Sourcing water for domestic, industrial and commercial purposes
Tourism and Environmental Laws

5) Construction of roads, culverts, bridges, ferries, waterways and other means of transport and communication in the region

6) Electrification.

The rights of local self government institutions in relation to ecotourism development *inter alia* are:

1) Licensing of tourism projects, buildings and activity areas including the right to reject a licence to the tourism industry if it refuses to cooperate

2) Levy and collect appropriate taxes, duties, tolls and fees

3) Participate in the preparation of plans for economic development and social justice

4) Monitor tourism industry’s exploitation of labour and natural resources and initiate criminal procedures on exploitation of women and children, including child labour by the tourism industry.

There are however various other factors that have constrained the ability of panchayats to function effectively as institutions of local self-government in India. Lack of adequate transfer of powers and resources to local government bodies, their inability to generate sufficient resources and issues like non-representation of women and weaker and marginalised sections in elected bodies are some issues that have handicapped the institutions of local self government.

b) Ecotourism as a market-based conservation mechanism

Ecotourism is undoubtedly big business across the world. When the United Nations Environment Programme with blessings of the World Tourism Organisation (now UNWTO) designated year 2002 as the International Year of Ecotourism, it received vociferous support and sponsorship from the tourism industry and travel associations. The reason was simple – ‘ecotourism’ was the magic *mantra* that enabled the tourism industry to pacify critics by using the language of conservation while attempting to manage the adverse environmental footprints of tourism while not compromising on profits. This green-washing was starkly evident to communities and groups in developing countries – which were the target for ecotourism – who wrote to UNEP and IYE organisers registering their protest and concerns. But despite these efforts, ecotourism continues to be a popular concept for governments and industry to adopt. There are those who think that brand ‘ecotourism’ has run its course and is on its way out, especially in the west and tourist-source countries. But sadly, this is not the case in countries like India where ecotourism continues to garner popularity and attention as a feasible concept thereby achieving active government support and industry investment. Ecotourism continues to be a popular option because of its claim to support conservation attempts through the market-based mechanism.
Estimates place the value of the ecotourism market in developing countries close to USD 400 billion annually. India has a substantial share of this market on account of its rich biological and cultural diversity and heritage and entrepreneurship skills in the tourism industry that have capitalised on ecotourism. The main incentives for the development of ecotourism have been through private capital, UN agencies and, more recently, involvement of international financial institutions like the World Bank and Asian Development Bank.

Parties to the Convention on Biodiversity (CBD) have embraced market-based approaches to biodiversity conservation. A strong push for such approaches came from the debate about Biological Diversity and Tourism, which was first initiated in 1999 and led to an extensive discussion about the negative and positive impacts of tourism on biodiversity at the fifth Conference of the Parties of the Biodiversity Convention in 2000. Despite a number of cautionary statements about the many things that can go wrong when tourism is being promoted in biodiversity-rich areas, Decision V/25 of the Conference of the Parties states that “tourism does present a significant potential for realising benefits in terms of the conservation of biological diversity and the sustainable use of its components”. In the same decision the Conference of the Parties also notes that “Historical observation indicates that self regulation of the tourism industry for sustainable use of biological resources has only rarely been successful”. Despite this acknowledgement of the inherent limitations of voluntary approaches, the Parties to the CBD subsequently embarked on a process to elaborate voluntary guidelines for Biodiversity and Tourism Development, which were adopted by the 7th Conference of the Parties to the CBD. The need to involve indigenous peoples and local communities in tourism development is mentioned in these guidelines, but only as a voluntary measure. As recognised by the CBD, it is extremely hard for communities to compete in a market that is “fiercely competitive” and “controlled by financial interests located away from tourist destinations” (decision V/25, Conference of the Parties). Also, negative impacts on local communities can be significant as “operators are very likely to ‘export’ their adverse environmental impacts, such as refuse, waste water and sewage, to parts of the surrounding area unlikely to be visited by tourists” (decision V/25 of the Conference of the Parties).

c) Ecotourism and Community Governance

There have been problems and even hurdles for local self government institutions to function effectively, and there are several instances from across India where ecotourism ventures and activities have been carried out without the consent of local self governments. This is because of the power play of the ecotourism industry lobby and higher authorities like the tourism, forest departments who have usurped the functions, bypassed the due processes and overruled the decisions of local self government institutions.
Tourism and Environmental Laws

Democratic deficit in decision making

The Constitutional Amendment and enactment of laws pertaining to functions and powers of local government institutions at State levels have by definition devolved powers to the panchayats, but these have not been implemented in letter and spirit.

There appears to be no space in the present governance structure for discussing issues such as tourism between the panchayats and bureaucracy; there have been no attempts made so far to create such a space. Tourism, being a cross-cutting issue that touches upon the social, economic, environmental, cultural and institutional aspects, is complex and hence sharing of information and a space for dialogue between panchayats and tourism and forest departments is essential.

The panchayats are not consulted when tourism projects or plans are prepared by the governments or by any other party. They only get to know about the project at the implementation stage after all clearances have been given by other departments, and when the party or parties seek a token ‘No Objection’ Certificate from the panchayat to go ahead with construction. At this stage, the panchayats feel they cannot refuse because clearances have already been given by other departments. Therefore, there is an absolute deficit of information and consultation required in democratic decision making on ecotourism development.

A good example of unilateral decision making by State governments is in the matter of allocating land for ecotourism purposes. It needs to be borne in mind that diversion of forest land for ecotourism purposes is done only by the forest departments where they themselves undertake ecotourism development activities; forest land cannot be passed on to private players, or for that matter to communities. Non-forest land comprising agriculture and grazing land is leased out to private developers by the governments either by acquiring it from local self governments or by simply leasing it in their name. This is sometimes even done in Scheduled Areas wherein such acquirement and transfer of land is constitutionally not permissible.

Pressure on local self government institutions without commensurate gains

The local self government institutions are also pressurised by ecotourism development to go beyond their mandate of providing essential public services to local people and catering to needs of tourists. Here are some examples that have a direct connection with tourism:

✱ Wastes, especially solid wastes – the panchayats are forced to clean up the mess caused by tourists. Sometimes, repeated requests to the State departments to either take care of collection and disposal of the wastes or provide additional funds to the panchayats to do so has not elicited any kind of response from them.
Amenities – All rural schemes are implemented by the panchayats. The panchayats are also responsible to establish amenities for the use of the public. While there is no separate budgetary provision for tourism per se, the amenities put up by the panchayats are also used by tourists. Sometimes the panchayats are also pressurised to put up amenities like public toilets to cater to demands of increasing tourist numbers.

Loss of benefits arising from use of biodiversity

The loss of benefits to local self government institutions is not direct and needs to be understood in the context of loss of benefits to indigenous and local communities. First of all, when the Ministry of Environment and Forests – Government of India took steps for setting up protected areas, large populations of indigenous and local communities were displaced when national parks and wildlife sanctuaries were notified. And now, the forest departments of many Indian States, including the States selected for this case study, are planning to develop ecotourism in many of these protected areas. In many cases, the operations involve the services of indigenous and local communities in the form of guides and workers in lodges etc. While there are inherent problems in the manner in which this form of ecotourism is done, i.e. largely driven by forest departments and corporations with little participation of communities in decision making and with benefits largely going to state exchequers, private entrepreneurs, ecotourism is nevertheless being promoted as a conservation scheme.

Secondly, many protected areas have witnessed a growth in the number of resorts, lodges and hotels on their peripheries. This has led to privatisation of common property resources through the process of acquisition by governments and transfer, through leasing, to private corporations and entrepreneurs.

This has led to loss of benefits accruing from use of minor forest produce and, in some cases, loss of pastureland.

Community-owned ecotourism initiatives are still playing a marginal role compared to the other schemes, which are often labelled as ecotourism and developed by large, often global, tour operators.

The communities consider ecotourism as a source of sustainable livelihood supplement and are not looking to compete for markets. It is extremely hard for communities to compete with a market that is fiercely competitive and which controlled by financial interests in tourist destinations. Most often, governments have overlooked these initiatives and have extended little support. On they other hand, they have promoted different versions of tourism as ecotourism with no semblance of conservation.

Attempts like the World Bank supported Joint Forest Managements and India Eco Development Projects have not contributed much to this impasse since they did not address
core issues of community control and access to natural resources. When ecotourism development permeates these realms of control, the fundamental issues of community rights remain unresolved and the stewardship is shifted to the ecotourism industry and its players from the community.

The basis of the rights-based approach in development of ecotourism is the 73rd and 74th Amendment to the Constitution of India, which accords rights to local self government institutions, bringing into their jurisdiction matters related to land, water, socio-economic development, infrastructure development, social welfare, social and urban forestry, waste management and maintenance of community assets. Ecotourism development falls under the purview of these subjects and therefore decision making by the local self government institutions is important. The local self government institutions need to be involved in all level of ecotourism development from approval of the project, to planning, implementing, development, marketing, evaluating, monitoring and research.

The local self government institutions have the right to formulate regulatory frameworks and the onus of ensuring compliance from the tourism industry would rest on the State governments, and need to be drawn from the multilateral environmental agreements. The Amendments have also strengthened women’s participation in decision-making in all levels of the three-tier governance system. Their role in charting the course of tourism development in accordance with community aspirations needs must be reinforced.

In addition to this, the Indian Parliament passed the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in December 2006. This is historic legislation that has been passed in recognition of forest community’s rights. The Act grants legal recognition to the rights of traditional forest dwelling communities, partially correcting the injustice caused by the forest laws mentioned above, and makes a beginning towards giving communities and the public a voice in forest and wildlife conservation. The implementation of this Act may help in reiterating the role of communities in protecting and managing forests, and to ensure benefits arising from the use of biodiversity.

5. **CASE STUDIES PERTAINING TO TOURISM AND ALLIED AREAS**

Let us now examine some Cases and Materials concerning the Coastal Environment. The catena of case law presented here concern management of the Indian coast. Most of the decisions relate to the interpretation of Coastal Regulation Zone Notifications in the larger context of the Environment Protection Act, 1986.

Analysis of the law in relation to the developmental activities in the sensitive coastal ecosystem and the directions issued by the courts for better management of the coast make fascinating reading. The case book provides an insight into the judicial mind that includes
devices employed by the judges to understand and grapple with myriads of technical issues and the conscious efforts made in balancing the concern for conservation and protection of the fragile eco-system and meeting the demands of development in the area. The study, in a way also demonstrates the legal possibilities and limits of judicial reasoning in rendering environmental justice.

The case of Indian Council for Enviro-Legal Action v. Union of India (1996(3) SCALE 579) involves examination of the processes of rule-making concerning the coast. Judicial intervention in this case brought into sharp focus and critically reviewed the factors responsible for issuance of the original notification and the rationale for subsequent amendments to the same. Some of the observations made by the apex court in the case are worth noting and should act as a beacon light for the rule making and its implementation by the State. Strongly criticizing frequent changes effected in the law concerning the coastal environment, the Supreme Court impressed upon the government the need for proper preparation and abundant precaution in fashioning rules and regulations and to implement the same with all seriousness. Cautioning the government, the court observed that enactment of a law without bothering to enforce the same or becoming oblivious to its infringement would shake the confidence of people in both the law and institutions of its enforcement.

Ambiguity in the demarcation of the High Tide Line was the bone of contention in the cases of Jacob Vadakan Cherry v. State of Kerala (1998 AIHC 1688) and Institute of Social Welfare v. State (1996 (1) KLT 718). In both the cases, the government took advantage of the discrepancy and successfully reclaimed land on the coast for construction of bridges. The court advised the government to explore the possibility of going ahead with the proposed activity without taking recourse to reclamation.

The right to relevant environmental information received a boost through judicial pronouncements made in Goa Foundation v. Goa State Committee on Coastal Environment (W.P. 115/1992) and Kaloor Joseph v. State of Kerala and Ors. (OP No. 20278 of 1999 decided on 2nd June 1998 - unreported). In both the cases the court ordered the appropriate governmental authorities to make available the Coastal Zone Management Plan in all public places, for the information and scrutiny of the people.

Prof. Sergio Carvalho v. The Staff of Goa and Others (1989 (1) GLT 276) and Goa Foundation and Ors. v. North Goa Planning and Development Authority and Ors. (1995(1) GLT 181) are cases concerning Eco-Tourism decided by the Bombay High Court. The activist stance taken by the higher judiciary on environmental issues appeared to have been greatly tempered by the economic considerations for facilitating construction of hotels and beach resorts on the coast in these two cases. The judicial mind appears to have been convinced by the kind of guidelines evolved for promoting Ecotourism in the area.
Upon an examination of these cases, one feels that the cause of environmental justice would have been served better if expert opinion on such highly sensitive and technical subjects was sought before the court arrived at its judgment. In contrast to these decisions is the stand upheld by the Odisha High Court in *Dinabhandu Sahoo and anr. v. Ministry of Tourism and Ors. (Writ Petition (Civil) 899/93)* that kept the Petitioners’ option open to approach the High court if and when the government violated any of the stipulations under the Coastal Regulation Zone Notifications to promote development of beach resorts in the area.

The approach of the courts of law in encouraging developmental activities on the coast appears un-uniform. In the *Konkan Railway Case (Goa Foundation and anr. v. Konkan Railway Corporation and ors. 1994 Mh. L.J.21)* the court chose the path of supporting a developmental activity notwithstanding the damage it caused to the fragile environment. The reasons given were that the court chose not to interfere in a policy decision of the government in which heavy investments were already made. The legal basis of drawing conclusions is debatable as provisions of Railways Act were interpreted to prevail over the stipulations under the Environment Protection Act.

Meeting the demands of energy by the government weighed heavily on the judicial mind when the Supreme court in the *Dahanu Taluka Environment Protection Group and anr. v. Bombay Suburban Electricity Supply Company Ltd. and Ors and Bombay Environment Action Group and Anr. v. The State of Maharashtra and Ors. (AIR 1991 SC 910)* gave the go ahead to the proposed Thermal Power Projects. Flouting of government guidelines and adverse impact on the coastal environment did not cut ice with the court as it felt power generation and making the same available as most essential for over all economic progress. All the same, there was a praiseworthy element in the judgment that required the involvement of well informed groups in the decision-making processes of the government concerning such developmental activities.

In a few cases the apex court and High courts have taken pains in the protection of traditional rights over resources that are environment friendly. In the *Aqua culture cases (S. Jagannath v. Union of India (1997) 2 SCC 87 and Gopi Aqua Farms v. Union of India 1997 6 SCC 577)* the Supreme Court issued a number of directions that warned against the practice of intense aqua farming that violated a number of principles of good environmental management and encouraged promotion of traditional aqua farming methods. *Chilika Lake Case (Kholamuhana Primary Fisherman Co-operative Society and Ors. v. State of Odisha AIR 1994 Odisha 191)* is an interesting case in which the Odisha High Court upheld the fishing rights of both the fishermen and non-fishermen.

A number of cases decided by the higher judiciary project their concerns for conservation. In *Centre for Environmental Law v. State of Odisha (1998 (86) CLT 247)* the Odisha High
Court issued a number of instructions to be observed by the governmental agencies in permitting any activity within the Bhitarakanika wildlife sanctuary. The instructions were aimed at protecting the flora and fauna, of which some were endemic to the region. The Adyar Creek Case (Consumer Action Group v. Union of India MLJ 1994, 61), in which conservation of wetlands was the issue, could have flared up emotions. It concerned erection of a memorial in honour of Dr. Ambedkar on a wetland. The court deftly handled the inflammatory issue by counselling the government to reconsider the proposal in a more rational way and ensure the ecological integrity of the wetlands. The case of People United For Better Living in Calcutta v. State of West Bengal (AIR 1993 Cal. 215) related to the establishment of World Trade Centre on wetlands. In the absence of relevant information before the court that would have justified undertaking of a developmental activity without adversely affecting the integrity of a very special eco-system, the Calcutta High Court did not approve of the proposed State action.

The trend of justice delivery concerning the coastal eco-system is indicative of the preliminary stage of preparedness of the courts of law in dealing with issues of development, protecting traditional rights and conservation of the sensitive ecological conditions of the area.

In order to ensure environmental justice the courts of law in India would be better served by the availability of expert knowledge, specialised legal knowledge and well trained administrative apparatus.

Some Supreme Court cases on Waste Management are:

♣ Indian Council for Enviro Legal Action v. Union of India (UOI) and Ors., 2000 (5) SCALE 286
♣ M.C. Mehta v. Kamal Nath and Ors., AIR 2002 SC 1515

1) B. L Wadhera v. Union of India AIR 1996 SC 2969

A writ petition was filed under Article 32 seeking directions to the Municipal Corporation of Delhi and the New Delhi Municipal Corporation to perform their statutory duties, in the collection, removal and disposal of garbage and other wastes from the city. The Court issued a couple of interim order, wherein directions were issued to the Delhi administration to perform their duties.

The Court held that the authorities entrusted with the work of pollution control have been wholly remiss in discharge of their duties under the law and that they cannot absolve themselves of their duties on the pretext of financial and other limitations like inefficiency of staff etc.
2) M.C. Mehta v. Union of India and ORS JT 1999 5 SC 18

Re: Airport Authority of India Ltd.

Hot mix plants; which were treated as hazardous industries were closed with effect from 1997 in pursuance of an order of the Supreme Court. The Airport Authority of India at the Indira Gandhi International Airport, New Delhi filed an application for permission to install hot mix plants in the vicinity of the airport for a period of one year for resurfacing of the runways for the safe landing and take off of aircrafts and for smooth handling of aircraft traffic. The application also stated that the resurfacing of the runways was last done in the year 1990-91, while surfacing of the secondary runway was carried out in 1993. It was further stated that due to the constant use of these runways by the ever increasing traffic both domestic and international racks have developed in the runways due to which certain runways were showing sign of distress, all of which required immediate resurfacing. Owing to an extra ordinary exceptional and special circumstances it was prayed before the court to permit the setting up a hot mix plant. The Airport Authority also set out a set of undertakings inform of an affidavit to be followed by them.

The important undertakings are: (1) the hot mix plants shall be at least two kilometers away from populace and residential areas; (2) the hot mix plants shall be fitted with pollution control devices of international standard and shall meet all the requirement prescribed by the Central Pollution Control Board; (3) the hot mix plants shall be used only for the purpose of preparing premix material for resurfacing of runways and no for other purpose. The petitioner placed several documents containing the bad effect of installation of hot mix plants in these areas. The court after going through the submission made by the petitioner and applicant ordered for installation of hot mix plant in the I.G. Airport. The reasoning given by the court was resurfacing of Airport Runways is a work of national importance and the Airport Authority of India has already called for global tenders for the job in question in which one of the eligibility criteria is that the firm must possess an adequate capacity environment friendly hot mix plant; electronically computerised paver finisher pneumatic and conventional rollers and tools and tackles.

3) M.C. Mehta v. Union of India (UOI) and Ors. Decided on 02.04.2003

A contempt petition against the respondent Ashok Kumar Chhabra arised in pursuant to the show cause notice of contempt issued by S.C. for willful violation of various orders passed by this Court.

The respondent was running hot mix plant industry located at village Rangpuri, New Delhi. The hot mix plant was the subject matter of consideration by an Expert Committee of Central Pollution Control Board (CPCB) to determine the pollution and hazardous aspects of this industry. On 13th March, 1996 the Court directed the CPCB to issue notice to the hot mix plants located in Delhi as to why they be not relocated.
The Board issued notices to the Hot Mix Plants and after considering the replies/objections filed by them, the Expert Committee of the Board arrived at the following conclusion:

“The process emissions from Hot Mix Plants contain particulate matter most of which are proven carcinogens. Therefore, the Expert Committee of CPCB has categorised Hot Mix Plants as hazardous industry (‘Ha’ category). As per Master Plan 2001, all hazardous/noxious industries should be shifted out of the Union Territory Delhi.”

Basing on the aforesaid report, S.C directed the 43 hot mix plants to stop functioning and operating in the city of Delhi and to relocate/shift themselves to any other industrial estate.

However, despite the order of closing down, and allotment of the alternative site, respondent continued operating his unit at Delhi culminating in the order dated 16th May, 1997 passed by the Chairman, Delhi Pollution Control Committee (DPCC), under Section 31(A) of Air (Prevention and Control of Pollution) Act, 1981 saying that the respondent shall stop functioning and operating the hot mix plant in the city of Delhi with immediate effect and sealed the plant. The respondent challenged the order before the Appellate Authority, Ministry of Environment and Forests under Section 31 of the Air Act. Dismissing the same the Appellate Authority observed that “the Appellant has committed a violation of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as it is mandatory to obtain consent under the Air Act. The Appellant had failed to comply with the directions of the DPCC”. As such it directed the unit to stop all its operation in the National Capital Region of Delhi.

Aggrieved by the said order, the respondent preferred a Writ Petition before the High Court of Delhi which passed an interim order staying the sealing order while making it clear that this in no way would affect the order of closure. Meanwhile, during the pendency of the writ in H.C. the respondent continued to operate his plant. When the same was brought to the notice of S.C., it passed an order directing that the said Hot Plant must be closed down, if operating and appropriate steps must be taken by the Delhi Pollution Control Board with necessary help from the Delhi Police.

However, in spite of various orders passed by this Court and orders passed by the competent authority, the respondent continued operating his unit.

As such S.C. issued contempt notice dated 25th November, 1999 to the respondent. The Respondent in his reply took the contention that he is operating the plant in pursuant to the orders of the Hon’ble High Court passed from time to time. On referring to the various orders passed by the H.C. the same was rejected by the S.C on referring the order passed by H.C. and came to the conclusion that, The respondent-contemner, in his own admission, has continued the functioning of the plant which is treated to be as hazardous and noxious industry in total disregard and consistent defiance of the orders passed by this Court which impunity and held that Ashok Kumar Chhabra is guilty of contempt of court.
4) **Almitra H. Patel and Anr. v. Union of India (UOI) and Ors.: 1998**

1) We have heard learned Additional Solicitor General and Shri Vellapalli, learned Senior Counsel. We consider it appropriate at this stage to constitute a Committee and to specify the specific aspects which the Committee is required to examine. We direct accordingly.

2) The Committee for Class I Cities (having population over one lakh) shall consist of the following:
   1) Mr. Asim Burman, (Commissioner, Chairman Calcutta Municipal Corpn.)
   2) Mr. S. R. Rao, (Secretary, SSI, Member Govt. of Gujarat and ex-Comm. Surat)
   3) Mr. S. K. Chawla, Chief Member Engineer, CPWD
   4) Mr. P. U. Asnani, (Urban Env. Member Infrastructure Rep. for India USAID and Consultant, Ahmedabad Mun. Corpn.)
   5) Dr. Saroj, (Jt. Director, Member Ministry of Environment and Forests)
   6) Mr. Rajat Bhargava, (Commissioner, Member Vijayawada Mun. Corpn.)
   7) Mr. Yogendra Tripathi, (Dy. Secy. Member Secretary Urban Dev. MOUA & E)
   8) Mrs. Almitra Patel, (Convenor, Member INTACH Waste Network)

3) The terms of Reference for the Committee shall be as under:

   To look into all aspects of urban solid waste management, particularly:

   1) Examine the existing practices and to suggest hygienic processing and waste disposal practices and proven technologies on the basis of economic feasibility and safety which the Corporations/Government may directly or indirectly adopt or sponsor.

   2) Examine and suggest ways to improve conditions in the formal and informal sector for promoting eco-friendly sorting, collection, transportation, disposal, recycling and reuse.

   3) To review municipal bye-laws and the powers of local bodies and regional planning authorities and suggest necessary modifications to ensure effective budgeting, financing, administration, monitoring and compliance.

   4) Examine and formulate standards and regulations for management of urban solid waste, and set time-frames within which the authorities shall be bound to implement the same.

   4) The Committee is requested to give its report as early as possible preferably not later than 30-6-1998. The Committee is also requested to give such interim reports as it may find convenient so to do.
5) The secretarial assistance at Delhi will be provided by the Ministry of Urban Development which will also make all other arrangements required by the Committee for its proper functioning while arrangements within the States/Union Territories would be made by the State/Union Territory concerned. The expenses incurred for the purpose to the same extent would be borne at this stage by the Ministry of Urban Development and the State Governments/Union Territories concerned. The final responsibility for meeting these expenses would be decided later on.

6) The local authorities and State Governments/Union Territories concerned shall extend all cooperation and assistance to the Committee for its proper functioning.

7) List the matter on 20-7-1998.

5) **Indian Council for Enviro Legal Action v. Union of India (UOI) and Ors.:2000**

1) On the 10th of October, 2000 we granted one more opportunity to all the parties to meet and consider the two proposals and finalise one of them. We further directed the Andhra Pradesh Pollution Control Board, hereinafter referred to as “the Board”, to file short affidavit to State which of the two proposals it considered feasible and possible to be executed. This affidavit was also to specify the period to be taken in completing the approved proposal. We further directed to, State, which of the industries have yet not readied the permissible level of waste and not likely to reach within three months and the last direction was with reference to the disbursement of compensation by the District Judge. So far as the last direction, as per the office report, the District Judge has sent an interim report dated 6th December, 2000 with prayer to grant six months further time to facilitate him to submit the final report. We grant the said the months to the District Judge for placing the final report.

2) In terms of the said order the Board had filed its status report. All the concerned parties met to consider the feasibility of the alternative proposals made by the CETP, Patanchery. The meeting was held on 20th October, 2000. According to the said report the committee discussed the alternatives in the light of the earlier orders passed by this Court and came to the conclusion that none of the alternative proposals were acceptable but the original first option of 18 km. pipe line was again approved. Annexure III of this Report finally deals with joint revised action plan for laying down this 18 km. pipe line project. It specifies the time frame within which this has to be achieved including its total cost. The matter referred at Serial No. 1 of this Annexure, is the EIA report for the pipe line project identifying the competent agency, awarding work, stating of the agencies as per terms and conditions. This was to be completed by January 2001. We are informed a final report is likely to be submitted shortly. As per this joint revised action plan, the entire scheme would be completed by August, 2002.
3) This scheme also envisages the proportionate costs to be born by the polluting industries, State Government and the Financial Institutions. On behalf of the polluting industries we are informed, towards this they have already deposited rupees two crore out of their 1/4th share. So far the State Government, learned counsel appearing for the State could not state as to by what time the State Government would be able to deposit their share and within what time it would be able to get sponsoring from the financial institutions for the deposit of their share for the lack of instruction. This is important, since the proposed joint action specifies fixed time frame for completing it, any delay on behalf of the State would badly affect this project. We hope and trust the State by the next date fixed will clearly state the time within which it would be able to do it, keeping in view of the time frame specified in this report.

4) So far laying down of the pipe line, is a matter of long term control of pollution but as a short time measure we have already directed the industries to minimise their pollution. According to the aforesaid status report the 15 industries which are referred in Annexure IV have achieved the permissible level of discharge which only requires further continuous monitoring for maintaining the environmental discipline. There are 85 industries as per Annexure V.

5) Annexure I of the additional affidavit which have already achieved 20 per cent hydraulic reduction or would be able to do so within the next three months. The members of CETP Patancheru included in this list achieved inlet standard of 15,000 MG/L of COD/TDS regularly.

6) Annexure VI contains the list of 14 industries which have been closed/sick due to business reasons. The recommendations with reference to these industries are that this should not be permitted to be reopened by the State Government at the present location as all of them except one are covered under Red Orange Category of polluting industries. The Annexure VII contains the list of 18 industries who despite the enforcement measures taken and notices issued remained as the defaulting category. These are recommended and ordered for closure till such time they reach both the permissible discharge standards as also hydraulic reduction. The said 18 industries are referred in Annexure A2 of the additional affidavit. As per the Annexure the industries at Serial Nos. 1, 2, 3, 4, 5, 6, 14, 16 and 17 are the industries which are already closed. In respect of the other industries closure order has already been issued until those industries bring their waste to the permissible norms as per joint action plan. So far as the aforesaid 85 industries referred in Annexure V, the Board will submit a fresh report on the completion of the three months which would be ending by 27th February, 2001 regarding the progress made by those industries, who were yet to complete the approved standard, in case any industry still remains yet to reach the fixed standard should be specifically mentioned.
7) Another issue raised is with reference to the waste minimisation by the polluting industries. This matter referred in the earlier report of the Board dated 8th July, 2000, wherein the proposal is to mandate environmental certification under ISD 14001 for the large/medium industries operating in district Amberat and Patancheru. This Waste Minimisation practice is in minimise this waste as well as to increase the production if such increase or expansion does not add to the pollution load at the point of generation. For obtaining this certification learned counsel appearing for the polluting industries sought time to seek instructions and if necessary file a reply. So we defer the matter to be considered on the next date of hearing.

8) Another matter referred in this report dated 8th July, 2000 is with reference to CETP conforming to the standard under Joint Action plan before the discharge. According to this report, CETP is to reach the standards of TDS 3000/NG/L. Learned counsel appearing for polluting industries for this also sought time to obtain instructions and to file reply if necessary. The Central Pollution Control Board will also file specific reply pertaining to this issue by the next date of hearing as to what standard is being followed and what it proposes to follow. If any notification has been issued, the same may also be annexed. This takes us to the last point which has also been referred in the said report dated 8th July, 2000 with reference to the treatment and dilution at Amberpet-STP.

9) According to the report;

“Keeping the above in view the Committee recommended that while preventive measures of hydraulic load reduction, waste minimisation along with evaporation/recovery is enforced by the APPCB among the industries i.e. the pipeline opinion-1 should be pursued in the context of further treatment and dilution of Amberpet-STP should be expanded and upgraded with secondary and tertiary treatment facilities to treat and dispose mainly organic and nutrient rich sewage into the Musti river.”

10) Except for this recommendation there is no specified plan for upgrading and expanding through secondary or tertiary treatment facilities. In this respect we desire specific reply to be filed by the State Government. Learned counsel for the State to file reply in this regard by the next date fixed, including the shortest time within which this would be done including making available the total cost for completing this and availability for this fund. All the said reports along with affidavits by the parties to be filed by or before 3rd March, 2001. Since the State Government is vitally concerned and involved in this project any delay effects it subject at large. We find that the State counsel normally lacks the instructions when the mailer is taken up, it would be proper that on the next date, some responsible officer of the State is also present to assist the State counsel.
11) Let this case be listed before us on or after 13th March, 2001 when this Bench sits next.
I.A. Nos. 18 and 19.

12) The applicant shall also implead within one week the other industries who are parties
in the present proceedings. Issue notice thereafter to them. In case any counsel is
appearing in these proceedings for the said industries notice may be served on such
learned counsel. Office report in this regard may be filed before the next date of hearing.

6) **M.C. Mehta v. Kamal Nath and Ors.: Decided On: 15.03.2002**

1) The above matter has been set down for hearing before us pursuant to the orders passed
by this Court (Justice S. Saghir Ahmad and Justice Doraiswamy Raju) on May 12,
2000 and the consequent Notice issued to the Executive Director, M/s Span Motels
Pvt. Ltd. at Manali, and the Executive Director, Span Motels Pvt. Ltd., Operations
Headquarters at New Delhi, calling upon them to show cause as to why in addition to
damages, exemplary damages be not awarded for having committed the various acts
set out and enumerated in detail in the main judgment reported in **M.C. Mehta v.
Kamal Nath and Ors.** wherein it was held as hereunder:

"39. We, therefore, order and direct as under:

1) The public trust doctrine, as discussed by us in this judgment is a part of the law
of the land.

2) The prior approval granted by the Government of India, Ministry of Environment
and Forest by the letter dated 24.11.1993 and the lease deed dated 11.4.1994 in
favour of the Motel are quashed. The lease granted to the Motel by the said lease
deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside. The
Himachal Pradesh Government shall take over the area and restore it to its original-
natural conditions.

3) The Motel shall pay compensation by way of cost for the restitution of the
environment and ecology of the area. The pollution caused by various constructions
made by the Motel in the riverbed and the banks of River Beas has to be removed
and reversed. We direct NEERI through its Director to inspect the area, if necessary,
and give an assessment of the cost which is likely to be incurred for reversing the
damage caused by the Motel to the environment and ecology of the area. NEERI
may take into consideration the report by the Board in this respect.

4) The Motel through its management shall show cause why pollution fine in addition
be not imposed on the Motel."
5) The Motel shall construct a boundary wall at a distance of not more than 4 meters from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel, which is covered by the lease dated 29.9.1981. The Motel shall not encroach/cover/utilise any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use.

6) The Motel shall not discharge untreated effluents into the river. We direct the Himachal Pradesh Pollution Control Board to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel.

7) The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law.


2) On being served with a Notice dated 14.12.1996, the matter was heard on 19.12.1996, when this Court (Justice Kuldip Singh and Justice S. Saghir Ahmed) passed the following order:

“Pursuant to the above quoted direction NEERI has filed its report. A copy of the report was given to the learned counsel for the Motel yesterday. Show cause notice to the Motel has been given on 2 counts — (i) why the Motel be not asked to pay compensation to reverse the degraded environment and (ii) why pollution fine, in addition, be not imposed. Mr. H.N. Salve, learned counsel appearing for the Motel states that he intends to file counter to the report filed by the NEERI. He has asked for short adjournment. We are of the view that prayer for adjournment is justified.

We, however, make it clear that this Court in the judgment dated December 13, 1996 has found as a fact that the Motel by constructing walls and bunds on the river Banks and in the river Bed, as detailed in the judgment, has interfered with the flow of the river. The said finding is final and no argument can be permitted to be addressed in that respect. The only question before this Court is the determination of quantum of compensation and further whether the fine in addition be imposed, if so, the quantum of fine.”
Tourism and Environmental Laws

3) When the matter came up for hearing on 4.8.98, the State of Himachal Pradesh was directed to examine the Report submitted by NEERI and also submits its own Plan of Action, too. Since, it was felt that the various owners of properties along the river banks would be benefited by the plan that is prepared, they should also be heard before any action is taken on the basis of such plan. The suggested plan and list of owners of properties were directed to be filed and thereupon Notices were also issued to them, in due course. On 16.3.99, Notice was issued to the Ministry of Environment, Government of India, to indicate their response to the Action Plan submitted by the Government of Himachal Pradesh on 12.12.98, wherein it was also stated that they are not possessed of sufficient financial means to implement their own action plan unless the Government of India provides them necessary finances. On 3.8.99, it was ordered that the larger issue regarding Action Plan will be considered later and the matter will be taken to decide the question relating to pollution fine, if any, to be imposed on the 1st respondent. On 28.9.98, the statement of Mr. Salve, learned counsel on behalf of the respondent, that M/s Span Motels (P) Ltd. was prepared to bear their fair share of the project cost of ecological restoration was recorded, and directed the same to be submitted in writing. On 19.01.2000, it was also ordered that the question of apportionment of cost of restoration of ecology as also the question of pollution fine will be considered by the Court on the next date of hearing. At the hearing on 29.2.2000, Shri G.L. Sanghi, Senior Advocate, appearing for M/s Span Motels (P) Ltd., challenged the legality of the proposed levy of fine, otherwise than through the manner envisaged under the relevant pollution laws by resorting to prosecution before criminal court and after a fair trial therefor. Mr. M.C. Mehta, apart from making submissions, was permitted to submit a note in response to the submissions of Shri G.L. Sanghi.

4) On a consideration of the respective stand on behalf of the parties on either side, by a judgment dated 12.5.2000, after adverting to the various laws relating to the prevention and control of pollution and for protection of environment, it was held as follows:

"Thus, in addition to the damages which have to be paid by M/s Span Motel, as directed in the main judgment, it cannot be punished with fine unless the entire procedure prescribed under the Act is followed and M/s Span Motel are tried for any of the offences contemplated by the Act and is found guilty.

The notice issued to M/s Span Motel why pollution fine be not imposed upon them is, therefore, withdrawn. But the matter does not end here.

Pollution is a civil wrong. By its very nature, it is a Tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. The
powers of this Court under Article 32 are not restricted and it can award damages in a PIL or a Writ Petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner. Unfortunately, notice for exemplary damages was not issued to M/s Span Motel although it ought to have been issued. The considerations for which “fine” can be imposed upon a person guilty of committing an offence are different from those on the basis of which exemplary damages can be awarded. While withdrawing the notice for payment of pollution fine, we direct a fresh notice be issued to M/s Span Motel to show cause why in addition to damages, exemplary damages be not awarded for having committed the acts set out and detailed in the main judgment. The notice shall be returnable within six weeks. This question shall be heard at the time of quantification of damages under the main judgment.”

5) Shri G.L. Sanghi, learned Senior counsel and Shri Rajiv Dutta, Senior counsel, were heard for M/s Span Motels Pvt. Ltd. Mr. M.C. Mehta, Shri Vijay Panjwani for Central Pollution Control Board, Shri N.C. Kochhar for State of Himachal Pradesh, and others were heard. Both G.L. Sanghi and Shri N.C. Kochhar, took us in great detail to the relevant portions of the pleadings, the various orders passed on different occasions and the reports submitted by the Central Pollution Control Board as well as by NEERI and the action plan submitted by the State of Himachal Pradesh. The counsel for Central Pollution Control Board also explained the tenor of the report submitted by it apart from inviting attention to Section 24 of the Water (Prevention and Control of Pollution) Act, 1974.

6) We have carefully considered the submissions made by them in the light of the materials on record. The sum and substance of the stand taken for M/s Span Motels (P) Ltd., is that the action taken and construction works executed by them at heavy cost was meant to protect not only their own property but the property of the State and the same was also in the interests of those on the basin and banks of both sides of the river Beas and a perusal of the remedial measures suggested in the technical reports noticed above would go to show that they have only executed such nature and type of works which now are suggested for execution in those reports as protective measures and, therefore, they cannot be held guilty of having committed any illegalities and interfered with or endangering the environment or ecology in the place to warrant the levy of exemplary damages against them. In pursuing such a stand the repeated endeavour was to reiterate that M/s Span Motels (P) Ltd. could not be said to have committed any illegal acts, when they really approached all the authorities concerned for effective action and even obtained necessary permissions for executing those necessary protective measures and works, at a stage when the authorities who are obliged themselves to undertake
such works were feeling helpless for want of funds to undertake them. Finally, it was contended that they have already spent considerable sum of their own money for the protective and relief measures undertaken by them and it will be unjust and harsh to impose upon them any further liability in the shape of exemplary damages, when they have already undertaken responsibility to bear a fair share of the project cost of ecological restoration. Shri G.L. Sanghi also reiterated and reinforced the said undertaking by stating that his clients stand by the same and there is no justification whatsoever to levy any exemplary damages against them.

7) This Court, on the earlier occasions, after advertting to the pleadings, relevant documents and the technical report of the Central Pollution Control Board, enumerated the various activities of the Span Motels considered to be illegal and constituted “callous interference with the natural flow of river Beas” resulting in the degradation of the environment and for that purpose indicted them with having “interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river”. We do not want to burden this judgment once again by repeating them in extenso. Equally, the Himachal Pradesh Government also was held to have committed patent breach of public trust by leasing the ecologically fragile land to the Motel. It is only on such findings, the “polluter prays” principle as interpreted by this Court with liability for harm to compensate not only the victims but also the cost of restoring the environmental degradation and reversing the damaged ecology was held applicable to this case. Those findings rendered earlier were held to be “final and no argument can be permitted to be addressed in that respect” and the only question that remained left is the “determination of quantum of compensation and further whether the fine in addition be imposed, if so, the quantum of fine”. Therefore, not only it is impermissible for the counsel for the Motel or anyone else to claim for a reversal of those findings or any reconsideration of the nature, character and legality or propriety of those activities of SMPL but we feel bound by them and not persuaded to proceed on a clean slate, bypassing the exercise earlier undertaken and the conclusions firmly recorded in this regard. After the submission of the technical report by NEERI also, it was held that the “question of apportionment of cost of restoration of ecology as also the question of pollution fine will be considered by the Court” on the next and further hearings. The NEERI report also does not appear to either give a clean chit or completely exonerate the Span Motel Pvt. Ltd. for their activities, which were earlier considered to constitute an onslaught on the fragile environment and ecology of the area.

8) Even in the judgment of this Court, since reported in (Supra) while accepting the claim of the Motels that the sine qua non for punishment of imprisonment and fine is a fair trial in a competent Court and that such punishment of imprisonment or fine can be imposed only after the person is found guilty by the competent court, a general and
passing reference has also been made to the earlier findings and as a consequence of which only it has been again held that though no fine as such can be imposed and the notice issued by this Court earlier be withdrawn, a fresh notice was directed to be issued to Span Motels Pvt. Ltd. as to why in addition to damages, as directed in the main judgment, exemplary damages cannot be awarded against them “for having committed the acts set out and detailed in the main judgment”. Equally, the object and purpose of such levy of exemplary damages was also indicated as to serve “a deterrent for others not to cause pollution in any manner”. Having regard to what has been stated supra, the question as to the imposition of exemplary damages and the liability of Span Motels Pvt. Ltd. in this regard has to necessarily depend upon the earlier findings of this Court that the Motel by constructing walls and bunds on the river banks and in the river bed as detailed in the judgment has interfered with the flow of the river and their liability to pay the damages on the principle of “Polluter pays” and also as an inevitable consequence thereof. The specification in the NEERI report regarding details of the activities of Span Motels Pvt. Ltd. and the nature of constructions made in 1993 in figure No. 2 that (a) “in 1993, to protect the newly acquired land as also the main resort land, the SMPL constructed concrete studs, stepped wall and concrete bars as depicted in Fig. 2”; (b) “blocked the mouth of the natural relief/spill channel by dumping of boulders” resulting in the leveling of the leased area and (c) “at the downstream of M/s SMPL, a private property owner has blocked the relief/spill channel by constructing a stonewall across the channel (E & F)” also confirms and only reinforce the need and justification for the indictment already made. The basis for their liability to be saddled with the exemplary costs has been firmly and irreversibly already laid down in the main judgment itself and there is no escape for the Span Motels Pvt. Ltd. in this regard. We have to necessarily proceed further only on those bases of facts and position of law, found and declared.

9) The question remaining for further consideration relating to the award of exemplary damages is only as to the quantum. The various laws in force to prevent, control pollution and protect environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as or imprisonment or either of them, depending upon the nature and extent of violation. The fine that may be imposed alone may extend even to one lakh of rupees. Keeping in view all these and the very object underlying the imposition of imprisonment and fine under the relevant laws to be not only punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which we consider to be almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the interests of justice to fix the quantum of exemplary damages payable by Span Motels Pvt. Ltd. at Rupees Ten lakhs only. This amount we are fixing keeping in view the undertaking given by them to bear a fair share of the project cost of ecological
Tourism and Environmental Laws

restoration which would be quite separate and apart from their liability for the exemplary damages. The question relating to the said quantum of liability for damages on the principle of “polluter pays”, as held by this Court against the Span Motels Pvt. Ltd. and undertaken by them, will be determined separately and left open for the time being. The amount, of special damages of Ten lakhs of rupees, shall be remitted to the State Government in the Department of Irrigation and Public Health to the Commissioner/Secretary for being utilised only for the flood protection works in the area of Beas river affected by the action of Span Motels Pvt. Ltd.

Some High Court cases – waste management


1) L.K. Koolwal v. State of Rajasthan and ors AIR 1988 Raj. 2

A writ petition was filed by the petitioner asking the court to issue directions to the state to perform its obligatory duties. The petitioner invoked Fundamental Rights and the Directives Principles of State Policy and brought to the fore the acute sanitation problem in Jaipur which, it claimed as hazardous to the life of the citizens of Jaipur.

The Court observed that maintenance of health, preservation of sanitation and environment falls within the purview of Article 21 of the Constitution as it adversely affect the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created of not checked.

The Court held that the Municipality had a statutory duty to remove the dirt, filth etc. from the city within a period of six months and clear the city of Jaipur from the date of this judgment. A committee was constituted to inspect the implementation of the judgment.

2) Wg. Cdr Utpal Barbara & Ors v. State of Assam & Ors (AIR 1999 Gau 78)

This case was filed under Article 226 of the Constitution of India for issuance of an appropriate writ to quash the order of the Additional District Magistrate banning the use of polythene bags throughout the District of Karnrup in Assam. The petitioners in this case were the proprietors of factories for manufacturing and supply of polythene bags. They alleged that the order of the Additional District Magistrate under Section 144 of the Code of Criminal Procedure had curtailed their fundamental right to carry on trade and business. In the petition they also contended that they had obtained licences/no objection certificates from the Gauhati Municipal Corporation, District Industries and the Central and State Pollution Control Board. The main issue before the court was whether the Additional District
Magistrate had exceeded his jurisdiction under Section 144, Cr.P.C. in passing the impugned order banning the use of polythene bags. The Gauhati High Court in its order held that unregulated and indiscriminate use of the polythene bag and its impact on environmental degradation could not be a ground for invoking Section 144, Cr.P.C. by imposing total ban on its use. The single judge bench also made it clear that if the district administration or the State Government considered that a total ban of polythene bag use was required, they could impose it by taking resort to appropriate legislations. The court also categorically pointed out that in the above mentioned facts Section 144 Cr.P.C. could be used for a short period but not in perpetuity.

3) **Appellants: All India Plastic Industries Association v. Respondent: Government of NCT of Delhi Department of Forests and Wildlife**

1) The question for consideration is whether the principles of natural justice enshrined in Rule 4 of the Environment (Protection) Rules, 1986 have been adhered to by the Respondents while issuing the impugned notification dated 7th January, 2009. In our opinion, the answer to this is in the affirmative, since the spirit of the law and the procedure has been followed, though not necessarily the restrictive letter of the law. No prejudice has been caused to the Petitioners in this respect.

The other question is whether on merits, the impugned notification dated 7th January, 2009 is invalid in law. Our answer to this question is in the negative.

The background facts:

One Mr. Vinod Kumar Jain filed a Public Interest Litigation (PIL) in this Court painting a grim picture of the failure by the civic agencies in Delhi to effectively manage solid waste. Vinod Kumar Jain v. Union of India and Ors. WP(C) No. 6456/04 decided on 7th August, 2008 One of the issues raised by Mr. Jain concerned the management of plastic waste, which according to him remains in the environment as it is non-biodegradable. It is said to enter the food chain resulting in health risks. The disposal of plastic waste in streams, canals, water bodies etc. compounds the problem caused to the environment.

2) Apparently, with a view to assist the Court in issuing appropriate directions, the Division Bench hearing the PIL constituted a Committee headed by Justice R.C. Chopra, a retired judge of this Court as its Convener, with the Chairman of the Central Pollution Control Board and the Chairman of the Delhi Pollution Control Committee as its Members. Seven questions were posed for the consideration of the Committee and the Report given by it in respect of each question is as follows:
Tourism and Environmental Laws

Question: Whether plastic bags are per-se injurious to health or hazardous to the environment?

Report: Virgin plastic bags are not per se injurious to health or hazardous to the environment but recycled/coloured bags are injurious. Therefore, a blanket ban on the use of plastic bags is not called for.

Question: Whether degradable/biodegradable plastic bags are an alternative and can be introduced without any difficulty?

Report: Biodegradable plastics are in its nascent stage and research work is on for the development of appropriate types of biodegradable plastics. It cannot be said that degradable plastics do not pose any health or environmental hazard. These do not decompose naturally on account of action of micro-organism. Biodegradable plastics however, are made of natural substances and decompose through microbial action. Therefore, biodegradable plastics should be encouraged for the manufacture and use of plastic bags.

Question: Whether bags made of other materials can substitute plastic bags and meet the demand?

Report: The use of plastic bags cannot be withdrawn or banned completely in Delhi but other alternatives can be encouraged and propagated which may result in reducing the demand/use of plastic bags. The chaos and problem created by the use of plastic bags is primarily because of waste generated by plastic bags which needs efficient handling by the authorities as well as by the Plastic Manufacturers Association.

Question: What are the existing laws to regulate the use of plastic bags in Delhi?

Report: The Delhi Degradable Plastic Bag (Manufacture, Sale and Usage) and Garbage (Control) Act, 2000 read with the Plastic Manufacturer, Sale and Usage Rules, 1999, as amended from time to time, provides that virgin or recycled plastic bags should be of a thickness not less than 20 microns and of a size not less than 8” × 12”. The thickness of plastic bags should be increased to 40 microns. The existing ban on use of plastic bags in some institutions such as in four/five star hotels, hospitals with 100 beds or more, restaurants with a seating of more than 100 etc. is not effectively enforced. Since the ban in these institutions takes care of a small percentage of plastic bags, the maximum consumption thereof being through main markets, local shopping centers, small shopkeepers and street vendors, the ban should be extended to them also.

Question: Whether recycling of the plastic bags waste is a health/environment hazard?

Report: Unsound recycling practices pertaining to plastics are a serious health / environmental hazard and those who violate the provisions of law in this regard should be dealt with very strictly.
Question: What are the major health or environmental hazards arising out of the use of plastic bags?

Report: The use only of virgin plastic bags which are translucent and of more than 40 microns thickness should be encouraged and this should take care of most of the health hazards particularly since these do not contain any harmful additives and can be easily identified by rag pickers for recycling purposes.

Question: What steps can be taken to check the health and environment hazards arising out of use of plastic bags in Delhi?

Report: The Committee gave as many as twelve recommendations, but it is not necessary to reproduce all of them for the purposes of this decision.

3) Suffice it to say, the Division Bench hearing the PIL generally accepted the recommendations of the Committee and issued the following directions in its final order dated 7th August, 2008:

i) The respondents Government of NCT of Delhi shall issue a proper notification fixing the minimum thickness of plastic bags at 40 microns in place of 20 microns currently stipulated.

ii) The respondents, Government of Delhi, the Pollution Control Committee of Delhi and the civic agencies shall take immediate steps for closure of unlicensed recycling units operating from non-conforming areas by using unsound methods for recycling of plastic bags.

iii) Government of India shall expedite the constitution of the committee for verifying protocols for degradable and biodegradable plastics in India if the same has not already been done.

iv) Government of NCT of Delhi shall issue an appropriate notification forbidding use of plastic bags in the main markets and local shopping centers apart from hotels, hospitals and malls where use of such bags is already forbidden.

v) The other recommendations referred to in the report made by the Committee appointed by this Court and extracted above shall be examined by the Government of NCT of Delhi as also the civic agencies and appropriate actions taken in accordance with law wherever such recommendations are found feasible.

4) Subsequent to the decision rendered by this Court, the Delhi Government issued advertisements in newspapers discouraging the use of plastic bags and a list of “must do” by consumers, retailers, manufacturers, recyclers, airports, malls, railways, fast food centers etc. Following up on this publicity blitz, the Delhi Government issued a notification dated 7th January, 2009 wherein it was mentioned in Clause (2) thereof that
Tourism and Environmental Laws

the use, sale and storage of all kinds of plastic bags is forbidden in several generally identified places in the National Capital Territory of Delhi. In Clause (3) of the notification, it was laid down that in places other than those covered by Clause (2), only biodegradable plastic bags could be used. The notification also conferred jurisdiction on several officials to enforce its terms.

5) The notification dated 7th January, 2009 reads as follows:

NOTIFICATION Dated 7th January, 2009

In exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986 read with notification No. U-11030/J/91-UTL, dated 10-9-1992 and in compliance of the Hon’ble High Court of Delhi’s order dated 7th August, 2008 in WP(C) No. 6456 of 2004, the Lieutenant Governor of National Capital Territory of Delhi hereby directs the following:

i) That the use, sale and storage of all kinds of plastic bags shall be forbidden in respect of the following places in the National Capital Territory of Delhi, namely:

a) Five Star and Four Star Hotels.
b) Hospitals with 100 or more beds except for the use of plastic bags as prescribed under Bio Medical Waste (Management and Handling) Rules, 1998.
c) All restaurants and eating places having seating capacity of more than 50 seats.
d) All fruit and vegetable outlets of Mother Dairy.
e) All liquor vends.
f) All shopping Malls.
g) All shops in main markets and local shopping centers.
h) All retail and wholesale outlets of Branded chain of outlets selling different consumer products including fruits and vegetables.

ii) In place other than the aforesaid places and as observed by the Hon’ble High Court of Delhi only Bio-degradable plastic bags shall be used.

The following officers shall implement these orders in their respective jurisdiction namely:-

1) Member Secretary, Delhi Pollution Control Committee and its staff.
2) Director Environment, and staff of Environment Dept. Govt. of Delhi.
3) Additional Divisional Magistrates in their respective district.
4) Sub-Divisional Magistrates in their respective jurisdiction.

-66-
Major Laws and Policies Pertaining to Tourism

5) Environmental Engineers, Delhi Pollution Control Committee in their respective jurisdiction.
7) Food and Supply Officers, in their respective jurisdiction.
8) Medical Officer Health, NDMC.
9) Director Health Services, Government of National Capital Territory of Delhi.
10) Municipal Health Officer, MCD.
11) Food Inspectors of PFA Department, Government of National Capital Territory of Delhi.

iii) Member Secretary, Delhi Pollution Control Committee shall act as the co-ordinator to implement the above orders. The Chairman and Member Secretary of the Delhi Pollution Control Committee are authorised to lodge the complaint under Section 19 of the Environment (Protection) Act, 1986 vide notification No. S.O.394(E) dated 16-4-1987 as further amended vide notification No. S.O.624(E) dated 3-9-1996.

iv) This is in supersession of the Government of Delhi’s earlier notification No. F.8(86)/EA/Env./2005(ii)/486, dated the 2nd June, 2005 and notification No. F.8(86)/EA/Env./2005/450, dated the 25th May, 2006.

v) This notification shall come into force with effect from the day it is notified in the Official Gazette.

By Order and in the Name of the Lt. Governor of the National Capital Territory of Delhi,

Sd/-
(Sushma Jerath)
Dy. Secy.

No.F.08(86)/EA/Env./2008/9473 Issued by:

Government of the National Capital Territory of Delhi Department of Environment and Forest and Wild Life New Delhi.

6) A perusal of the notification reveals that it has been issued in exercise of powers conferred by Section 5 of the Environment (Protection) Act, 1986 (for short the EPA) read with a Government of India notification (on which there is no dispute) and in compliance with the orders of this Court in the PIL initiated by Mr. Jain.
The submissions:

7) Petitioner No. 1 claiming to be an all India association of manufacturers of plastic bags and other plastic products filed a writ petition in this Court along with Petitioners No. 2 and 3. Petitioner No. 1 claims to represent more than 1,500 registered members on an all India basis. Petitioners No. 2 and 3 are said to be manufacturers/storers/users sellers of plastic products. These Petitioners have challenged the notification dated 7th January, 2009 because, it is submitted that the notification has put them under great hardship and their business has come to a total standstill. According to the Petitioners, a total ban on the use of plastics is an arbitrary measure and is not a reasonable restriction either under the provisions of Article 14 or Article 19(1)(g) or Article 301 of the Constitution.

8) There is no dispute that the power to issue the notification is available with the Respondents under Section 5 of the EPA but learned Counsel for the Petitioners submitted that this power has to be exercised in accordance with the Environment (Protection) Rules, 1986 (for short the EPR). In this context, it was submitted that the Respondents have not followed the mandatory procedure prescribed under the EPR and, therefore, the notification is not valid. The second submission of learned Counsel was that the Petitioners have no difficulty with direction No. (i), (ii), (iii) and (v) above but insofar as direction No. (iv) is concerned, it has been issued by the earlier Division Bench on a factual misconception. For understanding this contention of learned Counsel, direction No. (iv) is once again reproduced:

   iv) Government of NCT of Delhi shall issue an appropriate notification forbidding use of plastic bags in the main markets and local shopping centers apart from hotels, hospitals and malls where use of such bags is already forbidden.

9) According to learned Counsel for the Petitioners, the use of plastic bags in hotels, hospitals and malls is not forbidden. What is forbidden in these places is the use of non-degradable plastic bags. It is submitted that the conclusion of this Court that “where use of such bags is already forbidden” is partially inaccurate - what is forbidden is the use of non-degradable plastic bags and not all plastic bags. In support of this assertion, reliance is placed upon two notifications dated 2nd June, 2005 and 25th May, 2006 issued by the Government of Delhi which provide that the use of degradable plastic bags shall be compulsory in the following institutions. In other words, the use of non-degradable plastic bags is forbidden in these places, that is -

   a) All 4/5 star hotels categorised as such by the Department of Tourism, Government of India,

   b) All hospitals having bed strength of 100 beds or more,
Major Laws and Policies Pertaining to Tourism

c) All restaurants having seating capacity of more than 50 seats,
d) All food and vegetable outlets of Mother Dairy,
e) All liquor vends, and
f) All shopping malls.

10) It was submitted that since the High Court proceeded on a partially incorrect assumption that all plastic bags (both degradable and non-degradable) are forbidden in these institutions, therefore, directing extension of the ban to other institutions/areas of Delhi is erroneous.

11) The learned Additional Solicitor General appearing on behalf of the Respondents refuted the various submissions made by learned Counsel for the Petitioners. He also raised a preliminary objection to the effect that the Petitioners were fully represented in the PIL before this Court (through one Mr. O.P. Ratra). They cannot now be permitted to challenge the notification dated 7th January, 2009 which was issued in compliance with the directions given by this Court in the PIL. It is appropriate to first deal with the preliminary objection raised by the learned Additional Solicitor General.

Preliminary submission of the Respondents:

12) We find from the record of the PIL that one Mr. O.P. Ratra had moved an intervention application in the PIL. A perusal of that application reveals that Mr. Ratra claims to have been engaged in the development and promotion of applications of plastics since 1965. He says that he has served in various departments of the Government of India as well as in various technical committees etc. He cites his various accomplishments and concludes his application by submitting that plastic bags are technically and environmentally safe and that he is pained to notice that unjustifiable publicity is given against plastic bags in complete variance with the provisions of the law.

13) We also find from the record of the PIL that after this Court rendered its decision, Mr. Ratra filed a review application in the writ petition in which he described himself as a founder member of Plastics Chintak.

14) The learned Additional Solicitor General submitted before us that his instructing counsel made a search on the internet to determine the identity of Plastics Chintak. As a result of that search, some material was collected and that has been placed on record. From these documents, it has come to be known that Mr. Ratra is the Secretary of Plastics Chintak, which is a forum of All India Plastic Industries Association and All India Federation of Plastic Industries. Plastics Chintak is intended to create awareness that plastics are environmentally safe and eco-friendly, that plastic bags are essential and
Tourism and Environmental Laws

an integral part of our daily life and plastics cannot be banned completely without providing cheap and acceptable alternatives.

15) It may be noted that one of the two constituents of Plastics Chintak is All India Plastic Industries Association, which is Petitioner No. 1 in the writ petition that we are concerned with. The address of Plastics Chintak as displayed on the internet is c/o All India Plastic Industries Association, 203, Hansa Tower, 25, Central Market, Ashok Vihar, Phase-I, Delhi and this is the same as the address of Petitioner No. 1. The submission of learned Additional Solicitor General in this regard was that although the Petitioners in the case before us may not have directly been parties in the PIL, but they were certainly represented, or at least their point of view was certainly put forth by Mr. Ratra, who participated in the proceedings before the Justice Chopra Committee, intervened in the PIL and also filed a review petition in this Court. It was, therefore, submitted that it is too late in the day for the Petitioners to contend that they were not heard before the above mentioned directions were issued by this Court or that their point of view was not available with the Delhi Government when the notification dated 7th January, 2009 was issued.

16) Learned Counsel for the Petitioners did not refute the factual submission of the learned Additional Solicitor General about the identity of Mr. Ratra or his association with Petitioner No. 1 or even the connection between Plastics Chintak and Petitioner No. 1. We, therefore, have no option but to proceed on the basis that Mr. Ratra is integrally connected with Plastics Chintak as mentioned by him in the PIL and that Plastics Chintak is a forum which has Petitioner No. 1 as one of its constituents. We must also proceed on the basis that since Petitioner No. 1 has an all India reach, the point of view of all plastic manufacturers in India was represented by Mr. Ratra in the PIL.

17) What is the cumulative effect of this? As far as we can see, the entire PIL was heard and decided with the active participation of the plastic industry and manufacturers of plastic. Not only this, their view was also placed before the Justice Chopra Committee, which took into consideration the opinion of the plastic industry and manufacturers of plastic and only then submitted its Report. This Court delivered judgment in the PIL only after hearing all concerned parties, including Mr. Ratra. In essence, therefore, the Petitioners were parties to the PIL and if they had any grievance with the conclusions arrived at by this Court, the only appropriate course available for them would have been to either file a review petition in this Court (which they did through Mr. Ratra), or to prefer a petition for special leave to appeal in the Supreme Court.

18) By filing an independent writ petition, the Petitioners are inviting us to sit in judgment over the decision rendered by another Division Bench of this Court. We simply cannot do this, nor can we, without any valid reason, doubt the conclusions arrived at by a coordinate Bench.
19) In Govt. of A.P. v. B. Satyanarayana Rao it was said:

A decision by two Judges has a binding effect on another coordinate Bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law.

20) It might have been a completely different story if we did not agree with the conclusions arrived at by the earlier Division Bench. In that event, we could have referred the matter to a larger Bench, but no such submission was made.

21) In Vijay Laxmi Sadho (Dr) v. Jagdish it was said:

As the learned Single Judge was not in agreement with the view expressed in Devilal case [Devilal v. Kinkar Narmada Prasad, Election Petition No. 9 of 1980] it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view....It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of “different arguments” or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

22) Similarly, in Mahadeolal Kanodia v. Administrator General of West Bengal it was said: “Before we part with this appeal, however, it is our duty to refer to one incidental matter. We have noticed with some regret that when the earlier decision of two judges of the same High Court in Deo Rajan’s Case [58 CWN 64] was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of coordinate jurisdiction in a High Court start overruling one another’s decision.

23) Therefore, we uphold the contention of the learned Additional Solicitor General that we ought not to even entertain this writ petition, but leave it to the Petitioners to approach the Supreme Court for challenging the correctness of the conclusions arrived at by the earlier Division Bench.

24) It was submitted by learned Counsel for the Petitioners that even if the principles analogous to the principles of res judicata or constructive res judicata apply to this
Tourism and Environmental Laws

case, a challenge to the notification dated 7th January, 2009 is a completely independent cause of action and the Petitioners are entitled to independently challenge the validity of that notification. We do not think this is the correct way of looking at the issue. As we have mentioned above, the notification dated 7th January, 2009 was a direct result of the judgment of this Court in the PIL. The impugned notification was, in fact, issued in execution of the directions issued by this Court. That being the position, the mere issuance of the impugned notification does not give an independent cause of action to the Petitioners. There is nothing to suggest that the directions issued in the PIL were without jurisdiction or were excessive or arbitrary or could be challenged on any other ground whatsoever. In that view of the matter, if, in the faithful implementation of the decision of this Court, the Delhi Government decided to issue the impugned notification, it cannot be faulted with, unless of course the decision of this Court in the PIL is wrong, but as we have mentioned above, this is not the appropriate forum for raising that issue.

Natural justice and the Environment (Protection) Rules:

25) Nevertheless, having entertained this writ petition, which really involves issues of general public importance, we feel it appropriate to deal with the contentions raised by learned Counsel for the Petitioners. The first principal submission of learned Counsel was that the procedure given in Rule 4 of the EPR was not followed. The rules that we are concerned with are Rule 4(1), 4(2), 4(3)(a) and 4(4). These read as under:

4. Directions. - (1) Any direction issued under Section 5 shall be in writing.

(2) The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given.

(3-a) The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.

(3-b) xxx xxx xxx

(4) The Central Government shall within a period of 45 days from the date of receipt of the objections, if any, or from the date up to which an opportunity is given to the person, officer or authority to file objections whichever is earlier, after considering the objections, if any, received from the person, officer or authority sought to be directed and for reasons to be recorded in writing, confirm, modify or decide not to issue the proposed direction.” 26. The submission made by learned Counsel is to the effect that
the Petitioners were neither given a notice of the issuance of the notification nor were they given a hearing before the notification was actually issued. At first blush, this submission does appear to be attractive.

27) There is no doubt that the principles of natural justice, which are sought to be relied upon by learned Counsel for the Petitioners would generally be applicable to a case such as the present but at the same time it cannot be forgotten that these principles cannot be put in a strait jacket. It is now very well settled that the principles of natural justice are flexible and their scope, extent and applicability would depend from case to case.

28) In Karnataka SRTC v. S.G. Kotturappa, it was observed:

The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula.

29) Similarly, in P.D. Agrawal v. State Bank of India (2006) 8 SCC 776, it was said:

The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change.

30) Given the requirements of Rule 4 of the EPR, what is it that the Petitioners could expect? Their first expectation would be a notice that a notification on the lines of what was actually issued on 7th January, 2009 is contemplated. Their second expectation would be an opportunity of filing objections to the proposed notification and if deemed appropriate they would be heard before a final decision is taken on the question whether a notification should be issued and if so what its contents should be.

31) What has actually happened in this case? Before we answer this, it is important to remember (1) that the PIL concerned itself with the management of solid waste, particularly plastic waste, and (2) the prayer in the PIL was for a ban on the manufacture and sale of all plastic bags. It is in this context that the contention of learned Counsel for the Petitioners ought to be looked at.

32) Well before the impugned notification was even contemplated, the Petitioners were put on notice that there is a PIL, the outcome of which could be that the use of plastic bags may be prohibited. In response to this PIL, which was really in the nature of a notice of a blanket ban, the Petitioners intervened through Mr. Ratra and were given a full hearing in respect of the question whether the manufacture, use and sale of plastic bags should be prohibited. In addition thereto, the Petitioners were also given an
opportunity of placing their point of view before the Justice Chopra Committee and the Report of that Committee indicates that Mr. Ratra was given an adequate opportunity of placing his point of view (which he availed) before the Committee. Then, before final orders were passed by this Court, the Petitioners were again heard at length by a Division Bench which issued some directions, one of them being direction (iv) adverted to above. Significantly, this Court did not fully accept the prayer made in the PIL, but only partly granted the relief prayed for. This Court did not impose a blanket ban on the manufacture of plastics and its use and sale within Delhi. The direction was limited to only forbidding the use of plastic bags in certain areas of Delhi. In other words, the view of the Petitioners was (to an extent) accepted by this Court. It is only thereafter that the Delhi Government issued the notification dated 7th January, 2009. Clearly, therefore, the Petitioners were given a full length hearing on the issue on more than one occasion – before a constitutional court and also before a Committee – before any decision was taken on the issuance of a notification such as the one actually issued on 7th January, 2009. Both the expectations of the Petitioners were fulfilled — notice of a possible blanket ban and an opportunity of hearing before any such ban is imposed. To us, this is substantial and adequate, though not a literal, compliance with Rule 4 of the EPR.

33) In this context, it would be wise to refer to Ajit Kumar Nag v. G.M. (PJ), Indian Oil Corpn. Ltd., wherein the Supreme Court observed (in paragraph 44 of the Report):

But we are also aware that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated: “To do a great right” after all, it is permissible sometimes “to do a little wrong” [Per Mukharji, C.J. in Charan Lal Sahu v. Union of India (Bhopal Gas Disaster). While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than “precedential”.

34) It is true that the actual physical procedure laid down in Rule 4 of the EPR was not followed by the Respondents, but there can be no doubt that the spirit or the sum and substance of Rule 4 was followed, inasmuch as the Petitioners had notice of what was likely to happen or what was proposed. The Petitioners were given a hearing in respect of that proposed action and the hearing resulted in a decision being taken by this Court, which partly accepted their submissions. It is only then, and as a follow up, that a final decision was taken which took the shape of the notification dated 7th January, 2009. In other words, the entire range of activity postulated by Rule 4 of the EPR was
followed if not in letter then certainly in spirit before the impugned notification was issued. As the Supreme Court has told us, a pragmatic view of the matter has to be taken.

35) Has any prejudice been caused to the Petitioners for non-compliance of the physical procedure laid down in Rule 4 of the EPR? In this context, it was submitted by learned Counsel for the Petitioners that if an act has to be done in a particular manner, then it must be done in that manner or not at all. For this, reliance was placed upon Nazir Ahmed v. King Emperor. While this general proposition still holds the field, it is not an absolute proposition when over the years it has been recognised and accepted in independent India that flexibility in procedure or a play in the joints is permissible in given circumstances, particularly where the principles of natural justice are involved. As mentioned above, on the facts of this case, the Petitioners were given an adequate opportunity of placing their point of view not only before the administrative authorities but even before a judicial authority. This is much more than the Petitioners could have asked for. To this extent, the Petitioners can certainly have no grievance. Therefore, if the Petitioners are given more than what they are entitled to and if in being given that greater opportunity, the spirit of the law is followed, there can hardly be any reason for complaint on the part of the Petitioners.

36) Looked at from another point of view, all that the Petitioners can hope for, in these circumstances, is an opportunity of placing their point of view before the Respondents in respect of a blanket ban on the use of plastics. As held above, this opportunity was made available to the Petitioners (and they accepted it). During the pendency of this case, an opportunity was again offered to the Petitioners specifically in respect of the issuance of the notification dated 7th January, 2009. The learned Additional Solicitor General made an offer to the Petitioners for a post decisional hearing, as contemplated by Maneka Gandhi v. Union of India and Swadeshi Cotton Mills v. Union of India but this request was turned down by learned Counsel for the Petitioners. Had the Petitioners accepted the offer given by the learned Additional Solicitor General, the Respondents would have heard the Petitioners and taken a view in the matter but now that the offer has been rejected, we are left with no option but to determine if the view taken by the Respondents is in any manner prejudicial to the Petitioners or whether the decision making process can be faulted in any manner.

37) So far as the merits of the validity of the notification dated 7th January, 2009 are concerned, we will advert to it a little later. However, in so far as the decision making process is concerned, we are of the view that even though there has not been a literal or doctrinaire compliance with the provisions of Rule 4 of the EPR, the Petitioners have perhaps got a better hearing that they could have expected if Rule 4 of the EPR was
strictly complied with. In their getting a better opportunity of expressing their views, no prejudice has been caused to the Petitioners. Has the earlier Division Bench misconstrued the factual position?

38) In this context, learned Counsel for the Petitioners pointed out that direction (iv) issued by the earlier Division Bench proceeded on a factually, though partially, incorrect basis. In our opinion, as mentioned above, the Petitioners are entitled to challenge this direction independently if they believe that the direction was given on the basis of a wrong factual premise. That apart, whether the direction was based on an erroneous factual premise or not is really of no consequence at all. The intention of the earlier Division Bench was clearly to forbid the use of plastic bags completely in eight broadly categorised areas. This is clearly expressed in direction (iv). It hardly matters if the Division Bench wrongly believed that, even earlier, the use of plastic bags was forbidden in some of these categorised areas. There is nothing to suggest (except inferentially) that the direction issued by the earlier Division Bench would have been different had it been advised that the use of only non-degradable bags is forbidden in some categorised areas. As far as we are concerned, the earlier Division Bench would have been aware that the Report stated (though in a negative manner) that degradable plastics could pose a health or environmental hazard and that research work is on for the development of appropriate types of biodegradable plastics (second question posed to the Committee). Apparently keeping this in mind, inter alia, direction (iv) was issued by the earlier Division Bench.

39) We also find that direction (iv) is composite and the last few words in this direction, namely, “where use of such bags is already forbidden” are merely an appendage. These few words are clearly severable from the substance of the direction. At best, it could be said that these words form the justification for issuing the direction, but this might not be the best or only way of construing the basis of the direction. This is because the reasons for the direction are contained in the text of the judgment.

40) The true test, in these circumstances, would be this: Can the direction be sustained without the “offending” words on the basis of the contents of the judgment? In our opinion, the answer to this is in the affirmative. It appears to us that the earlier Division Bench was conscious of the fact that “A blanket ban on the use of plastic bags may be premature having regard to the to the fact that plastic bags are indeed part of the commercial milieu in the city and cannot be completely banned without providing cheap and acceptable alternatives.” It is for this reason that the earlier Division Bench did not ban the use of plastic bags all over the city — it restricted the ban only to a few specified areas. The logic of this is to be found in the following words from the decision of the earlier Division Bench:
If plastic bags are unacceptable in hotels, hospitals and malls, there is no reason why they should be permitted in main markets and local shopping centers. In that view forbidding use of plastic bags even in main markets and local shopping centers would, therefore, help in dealing with the menace of plastic garbage in Delhi.

41) At this stage, we need to remind ourselves that the earlier Division Bench was concerned with (1) the difficulty in the management of solid waste caused, \textit{inter alia}, by plastic bags — not necessarily degradable or non-degradable plastic bags, and (2) the possibility of a total ban on the use of plastic bags in Delhi. The solution arrived at by the earlier Division Bench was that (1) the management of solid waste caused, \textit{inter alia}, by plastic bags is possible if the use of plastic bags is curbed in some specified areas, and (2) a complete or a blanket ban on the use of plastic bags is inadvisable. We see no difficulty, \textit{per se}, in accepting both these conclusions which were arrived at after hearing all affected parties.

42) While construing the judgment of the earlier Division Bench, we must also remember what the Supreme Court said in Kesar Devi v. Union of India (2003) 7 SCC 42 that,

\textit{The judgment of a court is not to be interpreted like a statute where every word, as far as possible, has to be given a literal meaning and no word is to be ignored.}

43) Similarly, in British Railways Board v. Herrington 1972 AC 877 Lord Morris said:

\textit{There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.}

44) The impact of all this is that the action taken by the Delhi Government, namely, the issuance of the notification dated 7th January, 2009 is a direct consequence of the decision of this Court and if the Petitioners have any grievance in this regard, as we have said above, their remedy lies elsewhere, certainly not in another writ petition.

**Validity of the impugned notification:**

45) In so far as the merits of the impugned notification are concerned, we may note that it does not prohibit the manufacture of plastic bags, which appears to be the primary activity of the Petitioners. All that it seeks to achieve is a prohibition on the use, sale and storage of plastic bags in certain categorised locations within Delhi. Again, it is not as if there is a blanket ban on the use, sale or storage of all kinds of plastic bags all over Delhi. It is true that initially, only non-degradable plastic bags were prohibited in 4/5 star hotels, hospitals having a bed strength of 100 beds or more and restaurants having a seating capacity of more than 100 seats. However, what has now been done is to extend this ban to include degradable plastic bags as well and to prohibit their use.
Tourism and Environmental Laws

(Along with non-degradable plastic bags) in restaurants having a seating capacity of more than 50 seats. A ban on the use of degradable plastic bags has been extended to four other categorised areas, such as fruit and vegetable outlets of Mother Dairy, liquor vends, shopping malls and all shops in main markets and shopping centers. Is there anything terribly wrong with this?

46) According to learned Counsel for the Petitioners, his clients’ business has come to a standstill because of the impugned notification. We are unable to understand how this is possible. The manufacture of plastic bags has not been prohibited by the Respondents. The use and sale of plastic bags has also not been prohibited except in certain designated areas, and not elsewhere. At best, the manufacturing activity of the Petitioners would have been reduced or their quantum of sales would have decreased — but that is not sufficient to invalidate the impugned notification. There is only a partial prohibition imposed and not a complete prohibition, and certainly not one of such a magnitude as to fall foul of Article 19(6) of the Constitution.

47) In Om Prakash v. State of Uttar Pradesh the Supreme Court took the view that the prohibition on the sale of eggs within the municipal limits of Rishikesh was a reasonable restriction within the meaning of Article 19(6) of the Constitution. It was held that the nature of the trade and the public interest sought to be served are important factors to be taken into consideration. Although it was accepted that trade in eggs cannot be considered objectionable or injurious to society, yet the prohibition was held to be in public interest. Reliance was placed on the following passage from State of Madras v. V.G. Row:

It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.

48) Applying the tests laid down by the Constitution Bench, it is clear that the limitation on the sale, use and storage of plastic bags in certain areas in Delhi has been laid down keeping in view the problem of solid waste management, particularly of plastic bags, which choke drains and enter the food chain thereby potentially causing health risks. There can be no doubt that the limitations imposed are in public interest and have, apparently, been enforced in several other parts of India also. Merely because some commercial interests of the Petitioners are diluted does not mean that there is no public interest in issuing the impugned notification.
49) We find no good reason to strike down the impugned notification. The writ petition is dismissed. No costs.


This writ petition is directed against the clarification issued by the Department of Environment, Government of NCT of Delhi, New Delhi on 20.02.2009, with regard to the use of non-woven bags. The clarification was issued in the context of the earlier notification dated 07.01.2009, which was issued by the Lt. Governor of the National Capital Territory of Delhi, in exercise of powers conferred under Section 5 of the Environment (Protection) Act, 1986, read with Notification No. U-11030/J/91-UTL dated 10.09.1992 and in purported compliance of this Court’s order dated 07.08.2008 in WP(C) 6456/2004 entitled Vinod Kumar Jain v. Union of India and Anr.

The order dated 07.08.2008 passed by a Division Bench of this Court in Vinod Kumar Jain (supra) pertained to the use of plastic bags and the failure on the part of civic agencies with regard to solid waste management in Delhi. The said petition was filed in public interest. By the said order dated 07.08.2008, the writ petition was disposed of by, *inter alia*, directing that:

iv) Government of NCT of Delhi shall issue an appropriate notification forbidding use of plastic bags in the main markets and local shopping centers apart from hotels, hospitals and malls where use of such bags is already forbidden.

1) Pursuant to the said direction, the Government of NCT of Delhi issued the aforementioned notification dated 07.01.2009, the relevant portion of which reads as under:

In exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986 read with notification No. U-11030/J/91-UTL dated 10-9-1992 and in compliance of the Hon’ble High Court of Delhi’s order dated 7th August, 2008 in WP(C) No. 6456 of 2004, the Lieutenant Governor of National Capital Territory of Delhi hereby directs the following:

2) That the use, sale and storage of all kinds of plastic bags shall be forbidden in respect of the following places in the National Capital Territory of Delhi, namely:

   a) Five Star and Four Star Hotels.
   b) Hospitals with 100 or more beds except for the use of plastic bags as prescribed under Bio Medical Waste (Management and Handling) Rules, 1998.
   c) All restaurants and eating places having seating capacity of more than 50 seats.
   d) All fruit and vegetable outlets of Mother Dairy.
Tourism and Environmental Laws

e) All liquor vends.
f) All shopping Malls.
g) All shops in main markets and local shopping centres.
h) All retail and whole sale outlets of Branded chain of outlets selling different consumer products including fruits and vegetables.

3) In places other than the aforesaid places and as observed by the Hon’ble High Court of Delhi only Bio-degradable plastic bags shall be used.

4) Thereafter, certain queries had been raised on behalf of the Confederation of All India Traders, the Polythene Film Manufacturers. Association, the Delhi Mercantile Association and others with regard to the use of non-woven bags. In response to the said queries, the impugned clarification dated 20.02.2009 has been issued by the Department of Environment, Government of NCT of Delhi, New Delhi. The same reads as under:

Subject: Clarification regarding use of Non-woven bags.

Sir,

I am directed to refer to your queries regarding the above subject. It has been brought to the notice of this Department that after the ban on the use of all kinds of plastic bags, in compliance of the Hon’ble High Court of Delhi’s order dated 07.08.2008 there is increase in the use of non-woven types of bags which is also stated to be non-biodegradable. In order to assess the composition of these kinds of bags, testing was conducted at Shriram Institute of Industrial Research, New Delhi, which has clearly indicated that the composition of such non-woven bags contained Polypropylene to the tune of 98.3 per cent which is again a non-biodegradable material.

This fact was discussed in the Consent Management Committee meeting held on 20.2.2009 and it has been decided that such bags are also covered in the ambit of the High Court’s order and hence shall not be allowed in the Local Shopping Complexes and Main Markets in Delhi. This may clearly be communicated to all your members and may be circulated to them in your communication directing them not to use such bags. This is for information and strict compliance.

Yours sincerely,

Sd/-
(M. Dwarakanath)
Sr. Sci. Officer

-80-
At this juncture, it would be pertinent to note that the said notification dated 07.01.2009 was the subject matter of challenge in WP (C) 883/2009 entitled All India Plastic Industries Association and Ors. v. Government of NCT of Delhi. One of the questions raised in that writ petition was — whether, on merits, the notification dated 07.01.2009 was invalid in law? The Division Bench hearing the said WP(C) 883/2009, by its judgment and / or order dated 14.07.2009, answered the question in the negative. In other words, the Division Bench upheld the validity of the notification dated 07.01.2009. The Division Bench observed that:

There can be no doubt that the limitations imposed are in public interest and have, apparently, been enforced in several other parts of India also. Merely because some commercial interests of the Petitioners are diluted does not mean that there is no public interest in issuing the impugned notification.

Consequently, the Division Bench found no good reason to strike down the impugned notification, i.e., the notification dated 07.01.2009, and dismissed the writ petition. The said Division Bench decision in the case of All India Plastic Industries Association (supra) considered direction (iv) issued by the earlier Division Bench on 07.08.2008. In All India Plastic Industries Association (supra), the Division Bench clearly held:

The intention of the earlier Division Bench was clearly to forbid the use of plastic bags completely in eight broadly categorised areas. This clearly expressed in direction (iv).

In the said decision dated 14.07.2009, it was also observed as under:

40) The true test, in these circumstances, would be this: Can the direction be sustained without the “offending” words on the basis of the contents of the judgment? In our opinion, the answer to this is in the affirmative. It appears to us that the earlier Division Bench was conscious of the fact that “A blanket ban on the use of plastic bags may be premature having regard to the to the fact that plastic bags are indeed part of the commercial milieu in the city and cannot be completely banned without providing cheap and acceptable alternatives.” It is for this reason that the earlier Division Bench did not ban the use of plastic bags all over the city — it restricted the ban only to a few specified areas. The logic of this is to be found in the following words from the decision of the earlier Division Bench: “If plastic bags are unacceptable in hotels, hospitals and malls, there is no reason why they should be permitted in main markets and local shopping centers. In that view forbidding use of plastic bags even in main markets and local shopping centers would, therefore, help in dealing with the menace of plastic garbage in Delhi.”

41) At this stage, we need to remind ourselves that the earlier Division Bench was concerned with (1) the difficulty in the management of solid waste caused, inter alia, by plastic bags — not necessarily degradable or non- degradable plastic bags, and (2) the possibility
of a total ban on the use of plastic bags in Delhi. The solution arrived at by the earlier Division Bench was that (1) the management of solid waste caused, \textit{inter alia}, by plastic bags is possible if the use of plastic bags is curbed in some specified areas, and (2) a complete or a blanket ban on the use of plastic bags is inadvisable. We see no difficulty, \textit{per se}, in accepting both these conclusions which were arrived at after hearing all affected parties.

5) According to the petitioner, the non-woven bags manufactured by it, would not strictly fall under the category of “plastic bags” since they do not have the essential characteristics of plastic. According to the petitioner, plastic is made of film grade propylene. After the film is formed, it is stitched to make plastic bags. On the other hand, non-woven bags, such as those manufactured by the petitioner, are made of fibre grade propylene (350 FG). The said fibre grade propylene cannot be used to make plastic film and is only used for the purposes of making non-woven fabric / yarn, which, according to the petitioner, is altogether different from plastic. The further contention of the petitioner is that the non-woven propylene fibre bags are breathable and porous and that water can pass through them. Consequently, they would not choke the sewage system. The non-woven polypropylene fibre bags are made out of polypropylene fibres and, although they are not woven, but are bonded together, the end product is essentially a fabric.

6) The learned Counsel for the petitioner also placed reliance on Tariff Heading 56.03 of the Central Excise Tariff, to indicate that their product was classified as “textile fabric”. This was in an attempt to show that the non-woven polypropylene fibre bags manufactured by them were not really plastic bags as contemplated by the High Court in its order dated 07.08.2008 in WP(C) 6456/2004 as also in the notification dated 07.01.2009. The petitioner also submitted that the product manufactured by them had a soft fabric feel and was strong, washable and printable and that it was also 100 per cent recyclable and degradable, though not bio-degradable.

7) It was further contended on behalf of the petitioner that the judgment of this Court dated 07.08.2008 has been misunderstood by the respondent in the sense that the spirit of that judgment is not to ban plastic bags altogether, but to find a suitable alternative for plastic bags. According to the petitioner, the non-woven polypropylene fibre bags are a suitable alternative to plastic bags made out of polypropylene film. With regard to the decision of this Court in the case of All India Plastic Industries Association (supra), the petitioner clearly submitted that it did not dispute the findings therein in respect of the notification dated 07.01.2009 issued in pursuance of the earlier judgment of 07.08.2008, whereby the prohibition of use of plastic bags had been extended to shopping malls, main markets and local shopping centers. The learned Counsel for the petitioner submitted that the challenge is not directed against the notification of
07.01.2009, but against the clarification whereby the petitioner’s product is sought to be brought within the ambit of “plastic bags”. According to the learned Counsel for the petitioner, the petitioner’s product, i.e., non-woven propylene bags, are not strictly plastic and, therefore, cannot be covered under the said notification dated 07.01.2009. It was further contended that the impugned clarification has sought to bring the product of the petitioner within the ambit of the said judgment of this Court and the notification dated 07.01.2009, not on the ground that it is plastic, but on the ground that it is non-biodegradable. It was further reiterated that the spirit of the judgment dated 07.08.2008 was that an alternative to plastic should be found and that the petitioner’s product is, essentially, an alternative to plastic bags and ought not to be covered within the ban in terms of the notification dated 07.01.2009.

8) Mr Parag Tripathi, the learned Additional Solicitor General (ASG), who appeared on behalf of the respondent, submitted that the polypropylene non-woven bags are clearly within the ambit of the expression “plastic bags” inasmuch as they contain 98.3 per cent polypropylene. He submitted that this fact, which is mentioned in the impugned clarification, has not been assailed. The clarification dated 20.02.2009, clearly indicates that in order to assess the composition of such kind of bags, testing was conducted at Shriram Institute of Industrial Research, New Delhi, which has clearly indicated that such non-woven bags contained polypropylene to the extent of 98.3 per cent, which, again, is a non-biodegradable material. He submitted that non-woven bags possess similar properties to that of plastic bags. He submitted that use of non-woven polypropylene fibre is as harmful as propylene bags or plastic bags made out of propylene film. Both fall under the category of “plastic” and both are non-biodegradable. With regard to the Central Excise classification, the learned ASG submitted that the said classification as a textile has been done for specific purposes, and the same cannot be used to make a distinction between non-woven bags and plastic bags. He submitted that while polypropylene fibre can be moulded in such a manner to form non-woven textiles, which have a fabric like structure, it does not mean that they lose their property of being a plastic all the same. The learned ASG referred to the definition of “polypropylene” as per the New Lexicon Webster’s Dictionary of English Language. According to the said dictionary, “polypropylene” means: “a thermoplastic resin that is a moisture-resistant, hard, tough plastic used to make moulded objects in plates, fibres, film, rope and toys”. He also referred to the Delhi Plastic Bag (Manufacture, Sales and Usage) and Non-biodegradable Garbage (Control) Act, 2000 (hereinafter referred to as “the Delhi Plastic Bag Act”). Section 2(h) of the said Delhi Plastic Bag Act defines “non-biodegradable garbage” to mean waste, garbage or material, which is not bio-degradable garbage and includes “plastic material”, such as polyethylene, nylon, PVC, polypropylene, pet etc., which are not capable of being easily destroyed by the action of living organisms, light, heat, moisture, radiations, oxidations or
combination of all these factors and which are more specifically included in the Schedule of the said Act. The Schedule to the said Act lists items which fall under the category of “non-biodegradable garbage”. Polypropylene is indicated at S. No. 4. It was, therefore, contended that polypropylene was non-biodegradable and was a plastic material. Thus, non-woven bags, which contain 98.3 per cent polypropylene, would clearly be covered within the ambit of the expression “plastic bags” and, more particularly, “non-biodegradable plastic bags”. The learned ASG, therefore, submitted that the writ petition ought to be dismissed.

9) Having considered the arguments advanced on behalf of the parties, the key question that has to be answered is — whether the non-woven bags made out of polypropylene fibre would fall within the ambit of the expression “plastic bags”? It is an admitted position that the non-woven bags, which form the subject matter of this writ petition, comprise of 98.3 per cent polypropylene. Consequently, it would not be wrong to say that the non-woven bags in question are essentially non-woven polypropylene bags. The definition of polypropylene given in the New Lexicon Webster’s Dictionary makes it clear that propylene is a plastic and is used to make moulded objects in various forms. These forms include plates, fibres, films, ropes and toys. Polypropylene fibres are used for the manufacture of these non-woven bags. Polypropylene film is used for making plastic bags as they are normally understood. Whether it is polypropylene fibre or it is polypropylene film, the end product made out of it would remain to be plastic, provided the end product predominantly contains polypropylene, whether fibre or film. In the present case, the admitted position is that the non-woven bags comprise of 98.3 per cent polypropylene. Therefore, the conclusion is simple that the end product is nothing but plastic. Since the products manufactured by the petitioner are admittedly bags, they would fall within the expression “plastic bags”.

10) We may also point out that the clarification dated 20.02.2009 was really not necessary. This is so because when we consider the question of prohibiting the use of plastic bags in main markets and local shopping centers, the same is provided in paragraph 2 of the notification dated 07.01.2009. The said paragraph 2 clearly stipulates that the use, sale and storage of “all kinds of plastic bags” shall be forbidden in respect of, inter alia, all shops and main markets and local shopping centers. Thus, whether the non-woven bags were bio-degradable or non-biodegradable, would be irrelevant for the purposes of paragraph 2 of the notification dated 07.01.2009. All that was needed to be seen was — whether the non-woven bags fell within the category of “plastic bags” or not? It did not matter, in the least, as to whether they were degradable or non-biodegradable. The question of bio-degradable plastic bags is only relevant for the purposes of paragraph 3 of the notification dated 07.01.2009, which refers to “all other places” not mentioned in paragraph 2 of the said notification.
11) In any event, the petitioner’s non-woven polypropylene bags would be covered in the
expression “all kinds of plastic bags” as appearing in paragraph 2 of the said notification.
Since the non-woven bags are admittedly not bio-degradable, they cannot be used at
other places in Delhi also in view of paragraph 3 of the notification dated 07.01.2009.
The argument that the petitioner’s product is porous and that water can pass through
the same is of no consequence because that is not the consideration which is to be
taken into account while construing the notification dated 07.01.2009. Paragraph 2 of
the said notification, as already indicated above, refers to “all kinds” of plastic bags.
Once the petitioner’s product falls within the ambit of “plastic bags”, it is immaterial
as to whether it is porous or whether it is a textile. The petitioner’s argument that non-
woven polypropylene bags are an alternative to plastic bags also does not appeal to us.
The non-woven polypropylene bags are plastic bags in themselves and, therefore, they
cannot be a substitute for plastic bags as suggested by the learned Counsel for the
petitioner.

12) In view of the foregoing, the writ petition is dismissed. No order as to costs.
UNIT 3 TOURISM AND FIVE YEAR PLANS IN INDIA

Contents
1. Introduction
2. Government Plans for Tourism

1. INTRODUCTION

The economy of India is based in part on planning through its five-year plans, which are developed, executed and monitored by the Planning Commission of India. The eleventh plan completed its term in March 2012 and the twelfth plan is currently underway. Prior to the fourth plan, the allocation of State resources was based on schematic patterns rather than a transparent and objective mechanism, which led to the adoption of the Gadgil formula in 1969. Revised versions of the formula have been used since then to determine the allocation of central assistance for State plans.

The first Indian Prime Minister, Jawaharlal Nehru presented the first five-year plan to the Parliament of India and needed urgent attention. The total planned budget of 2069 crore was allocated to seven broad areas: irrigation and energy (27.2 per cent), agriculture and community development (17.4 per cent), transport and communications (24 per cent), industry (8.4 per cent), social services (16.64 per cent), land rehabilitation (4.1 per cent), and for other sectors and services (2.5 per cent). The most important feature of this phase was active role of state in all economic sectors. Such a role was justified at that time because immediately after independence, India was facing basic problems — deficiency of capital and low capacity to save.

At the end of the plan period in 1956, five Indian Institutes of Technology (IITs) were started as major technical institutions. The University Grant Commission was set up to take care of funding and take measures to strengthen the higher education in the country. Contracts were signed to start five steel plants, which came into existence in the middle of the second five-year plan. The plan was successful.

The Fifth Plan (1974-1979) was the first plan that lay emphasis on tourism. It also stressed on employment, poverty alleviation and justice. The plan also focused on self-reliance in agricultural production and defence. The Indian national highway system was introduced and many roads were widened to accommodate the increasing traffic. Tourism also expanded.

The Eighth Plan (1992-1997) elaborated on the role of tourism even more. The plan marked the beginning of privatisation and liberalisation in India. Modernisation of industries was a major highlight of the Eighth Plan. Under this plan, the gradual opening of the Indian economy
Tourism and Five Year Plans in India

was undertaken to correct the burgeoning deficit and foreign debt. Meanwhile India became a member of the World Trade Organisation on 1 January 1995. The major objectives included, controlling population growth, poverty reduction, employment generation, strengthening the infrastructure, institutional building, tourism management, Human Resource Development, involvement of Panchayat Raj, Nagar Palikas, N.G.O’S and Decentralisation and people’s participation.

Eleventh Plan (2007–2012) had infrastructure development as on of its major objectives. It envisages, ‘Ensure all-weather road connection to all habitation with population 1000 and above (500 in hilly and tribal areas) by 2009, and ensure coverage of all significant habitation by 2015’. The current Twelfth Five Year Plan of the Government of India (2012–17) had decided the Final growth target as 8 per cent, as per the endorsement of plan at the National Development Council meeting held in New Delhi.

2. **GOVERNMENT PLANS FOR TOURISM**

Tourism planning in India started quite late with the first tourism policy being announced by the Government of India in November, 1982 after tourism was recognised as an industry by the Planning Commission of India in June, 1982. In July, 1986 the Planning Commission of India set up the National Committee on Tourism in order to formulate plans for this sector. The government’s initiatives of incorporating a planned tourism sector in India went a long way in boosting Indian tourism.

In May, 1992 the National Action Plan for tourism was announced. The objectives of this landmark plan for tourism planning in India were:

- To improve the economy category domestic tourism
- To develop the tourist areas socially and economically
- To preserve the environment and the national heritage
- To encourage international tourism
- To improve in world tourism India’s share
- To increase opportunities for employment in this sector

India tourism planning increased with the seventh five year plan India (1985-1989). The various policies advocated by the seventh plan for tourism planning in India are:

- To promote aggressively domestic tourism
- It laid stress on creating more beach resorts
- To conduct conferences, trekking, conventions, and winter sports so that various options are available to the foreign tourists
These policies of the seventh five year plan gave a boost to the tourism planning in India. To further encourage tourism planning in India, the eighth five year plan (1992-1997) mentioned that the private sector should increase its participation in the sector. The various policies advocated by the eighth plan for tourism planning in India are:

- To develop the tourists places
- To develop winter sports, beach resort, and wildlife tourism
- To restore the projects of national heritage
- To provide in tourists centers economy class accommodation

Tourism planning in India has increased by leaps and bounds in the last few years and the government and Department of Tourism needs to make continuous efforts to ensure that tourism planning in India takes the tourism sector of the country to greater heights on a sustainable basis. Let us examine some important five year plans in detail.

I) 10th Five year plan, 2002-07

During the 10th Five Year Plan 2002-07, an attempt was made to position tourism as a major contributor of economic growth, and harness its direct and multiplier effects for employment and poverty eradication in an environmentally sustainable manner. Various schemes and activities taken up during the 10th Plan period aimed at enhancing the employment potential within the tourism sector as well as at fostering economic integration through developing linkages with other sectors. Broadly, the attempt was to:

- Position tourism as a major engine of economic growth;
- Harness the direct and multiplier effects of tourism for employment generation, economic development and providing impetus to rural tourism;
- Focus on Domestic Tourism as a major driver of tourism growth;
- Position India as a global brand to take advantage of the burgeoning global travel and trade and the vast untapped potential of India as a destination;
- Acknowledge the critical role of private sector with government working as a pro-active facilitator and catalyst;
- Create and develop integrated tourism circuits based on India’s unique civilization, heritage, and culture in partnership with States, private sector and other agencies;
- Ensure that the tourist to India gets physically invigorated, mentally rejuvenated, culturally enriched, spiritually elevated and feel India from within.

The 10th Five Year Plan had a distinct shift from the approach adopted in the earlier plans. During the plan period, emphasis was laid on:
Tourism and Five Year Plans in India

i) Positioning and maintaining tourism development as a National priority activity
ii) Enhancing and maintaining the competitiveness of India as a tourist destination
iii) Improving India’s existing tourism products and expanding these to meet new market requirements
iv) Creation of world class infrastructure
v) Developing sustained and effective market plans and programmes
vi) Special thrust to rural and small segment tourism
vii) Attention to civilizational issues and issues pertaining to civic administration, good governance and also to social and cultural values

Keeping in view the broad priorities for development of tourism during the 10th Plan 2002-07 as above, the broad fields of development taken up during the plan were:

♣ Integrated Development of Tourism Circuits
♣ Product/Infrastructure and Destination Development
♣ Assistance for Large Revenue Generating Projects
♣ Human Resource Development
♣ Promotion and Publicity
♣ Others (Market Research / Computerisation and IT/ Interest Subsidy)

During this plan, a National Committee on ecotourism headed by the then Tourism Minister Mr. Jagmohan, was formulated in 2002. Salient features of the Committee are:

– Funds were raised through multilateral agencies, such as United Nations Development Programme, United Nations Environment Programme and Asian Development Bank.
– The policy for funding of projects was for States which work on plans drawn in consultation with the ministry for the integrated development of tourist destinations.
– The report recognises the underlying central concept of partnership of local communities in conservation and management of wildlife resources by enhancing and improving the quality of their livelihoods, and thus by increasing their stake in well-being of wildlife. A new scheme to operationalise the emerging concept of ecotourism for livelihoods of local communities is being proposed in the 12th Five year plan.


a) Creating global awareness about the immense ecotourism/adventure tourism potential in India. This can be done through road shows, digital media, broachers and advertisements.
Tourism and Environmental Law

b) Revival of an already existing national ecotourism policy. Uniform rules throughout India, especially with regard to safety and ecological guidelines

c) Ensuring that country has a pool of trained adventure/ Ecotourism personnel by starting institutes which offer Adventure and Ecotourism as subjects in their syllabus

d) Ensuring international safety standards by using satellite phones and global positioning system (GPS).

e) Detailed environmental pledge has been formulated and is contained in the Environment and Ecotourism handbook published by the Ministry of Tourism for the sectors of the Industry such as tour operators, hoteliers, airlines, transporters, lodge owners etc.

f) Carrying capacity studies be undertaken for popular trekking trails, national parks, rivers, etc. so that a low environmental impact is maintained and sustainable practices are in place by the Industry

g) A Tourism and Environmental law weekend course for all stake holders as well as Government to know their Rights and Duties as a citizen

h) Industry to partner State Governments and NGOs to keep cities and towns clean in conjunction with local authorities

i) Environment education should be included in the curriculum of schools and colleges with a special component of Ecotourism to make an eco sensitive population of tomorrow.

II) The 12th Five year plan (2012-2017):

1) Priorities for the 12th Plan are as follows:
   – To build inter-sectoral linkages, especially to support resource flow as well as build support for the sector.
   – Strengthen linkages with local communities to garner their active support for conservation.
   – Set out a national framework for ecotourism development to facilitate inclusive growth of local communities including tribals and other marginalised sections of society.

2) Potential Areas :

   The following are identified as major potential areas for ecotourism:

   a) Protected Area based Ecotourism: This category comprises of all ecotourism relating to PAs (National Parks, Sanctuaries and Tiger Reserves).
b) Ecotourism in Forests outside Protected Areas: This category comprises all ecotourism in Reserved Forests, Protected Forests, and other Government owned ‘forest lands’ (as defined under the Forest Conservation Act, 1980) outside of Protected Areas.

c) Village based Ecotourism: This category comprises all ecotourism that centers on village landscapes, some natural formations, such as private forests or private land near Protected Areas, lakes, coral reefs, waterfalls, etc., and managed by local individuals or communities.

d) *Ex situ* Conservation Areas (Ecological Gardens, Zoological Parks, Botanical Gardens and Biodiversity Parks): This category covers conservation areas that are largely managed by the Central Zoo Authority (CZA), Botanical Survey of India, and Forest Department.

3) Operational Models

Ecotourism products and services have to be focused upon for providing unique experience to the visitors. These can be operationalised through various models. Some of the models already been practiced throughout India are as follows:

**Departmental (Boards or Corporations):**

In this model the investment, operation and management of the destination will be done by the department. The entire operations will be managed departmentally. The Forest Committees can be involved on the issues regarding land conversion and land rights persist.

**Joint Venture with other departments:**

Different departments are involved in establishment, operation and management of the ecotourism destinations. Tourism Department having the expertise in hospitality industry can help initiate the destinations and work in synergy with the state level bodies implementing ecotourism. There can be various business models within this framework with investment partnerships, functional partnerships or land / property lease to the departments.

**Public Private Partnership/Corporate Social Responsibility:**

PPP is a project based Concession Agreement (a structured contract) between a government entity and a private entity, to create and / or manage infrastructure for public purpose, for a fixed time-frame, on commercial terms, and assets revert to government on end of contract.

There are two models under this framework which include:

1) **Build Own Operate Transfer:** Long term partnership for ecotourism infrastructure on non-forest lands

2) **Operational Management Contract:** Contracting the operations of the destination
The areas for ecotourism development can be taken up by corporates for investment and establishment under CSR. Community based Ecotourism CBE includes Ecotourism enterprises that are owned and managed by the community and involves conservation, business enterprise and community development. There can be various models within this framework like:

1) Self-Initiated and community managed, e.g. Kokkrebellur, Karnataka
2) NGO Initiated and community owned, e.g. Rampuria, Darjeeling; Pastanga, Sikkim
3) Co-managed i.e. Community Managed and Government Supported, e.g. Bamboo Groves, Kerala
4) Ecotourism and Livelihood:
For Ecotourism Entrepreneurship in Protected Areas, the locals can be involved in guiding, homesteads, local service outlets (vegetable hawkers, cobblers, mechanics, cleaners, etc.), souvenir shops, arts and handicrafts, vehicle owners and drivers, conducting ecotourism activities (boating, cycling, nature trail, etc.) and other Park management activities. For Ecotourism Entrepreneurship in Forests outside Protected Areas, the locals can be involved right from the planning stage, helping in developing the site ecotourism plan acting as field resources. They can act as entrepreneurs running activities like cafeterias, arts and handicrafts outlets, performance arts groups and other ancillary activities. For employment, they can be employed as guides (for nature and cycling trails), boatmen, managers at interpretation centers, helping staff for cafeteria, adventure activities, etc.

For Ecotourism Entrepreneurship in village areas, in village areas the villagers can collaboratively work for development of entire site and run homesteads. Small homesteads (with 3-4 rooms) where local people provide accommodation to tourists in their own houses may be promoted. They can act as local tour operators who can organise tours and packages for tourists including exposure visits to their farms, sacred groves, NTFP centers, etc. They can operate traditional centers for publicising their culture, traditions, arts, crafts, foods, etc. For Ecotourism Entrepreneurship in Ex situ Conservation areas (Ecological Gardens, Zoological Parks, Botanical Gardens, Eco-Parks and Biodiversity Parks), in such areas locals can be involved in maintenance jobs like gardeners, cleaners, field staff, guards, caretakers, etc. They can operate ecotourism activities and guided tours to the areas and can be included in various ground-truthing and data collection activities.

5) Thrust Areas
The Thrust areas identified for sustainable development of Ecotourism Scheme.

1) Innovative ecotourism projects (home stays, eco-friendly resorts (eco-lodges), tented camps) outside high density tourism zones, with preference to those owned and managed by local communities.
2) Continuous Capacity building and entrepreneurship of local stakeholders in all spheres of ecotourism management.

3) Develop modules for mainstream hospitality, travel and tourism, ecotourism management courses so that all ecotourism activities can promote ecologically friendly behaviour.

4) Develop systems of research, monitoring, regulation and accreditation.

5) Develop ecotourism standards that discuss repatriation of income to local communities, levels of energy consumption, source of energy consumption, waste disposal methods and education of visitors.

6) Ensure compliance of ecotourism standards for all tourism within 5 kms. of protected areas, biosphere reserves, critical tribal habitats, and forest areas. This would give a fair playing ground for firms willing to comply, as all competitors eliminate undesirable services.

7) Build a system of incentives and concessions for expensive best practices, such as local procurement, waste disposal and alternate energy.

8) Build a system of penalty for practices that eliminates local communities or promotes leakages of income from local areas.

9) Strengthen IT infrastructure, networking and Data management through ICT tools and mechanisms for systematic and effective implementation and monitoring. Structure and guildlines for development of Ecotourism:

Key players:
♣ Governments at both levels,
♣ Local authorities,
♣ Developers and the operators,
♣ Visitors,
♣ The local community,
♣ NGO’s and
♣ Scientific and research institutions.

Government responsibilities for Ecotourism:

1) A management plan for each ecotourism area should be prepared by professional landscape architects and urban planners, in consultation with the local community as well as others directly concerned.
Tourism and Environmental Laws

2) Preparation 20-year Master Plans for each state to avoid inter-sectoral and cross-sectoral conflict.

3) Regulate structures that create visual pollution, unaesthetic views and are non-compatible architecture; and encourage use of local building material and structures befitting the local environment.

4) Exclude developments in geologically unstable zones and define development and buffer zones after proper environmental impact assessments.

5) Establish and enforce standards, building codes and other regulations.

6) Specify environmental, physical and social carrying capacities to limit development.

7) Recognise and award quality by accreditation of ecotourism operators.

8) Provide visitor information and interpretation services covering particularly (i) what to see; (ii) how to see it; and (iii) how to behave. This can be by way of brochures, leaflets, specialised guides, visitor information centers and such.

9) Prepare and distribute codes of conduct to all visitors.

10) Launch training programmes on ecotourism for tourism administrators, planners, operators and the general public Roles and Responsibilities of Ecotourism Developers and Operators:

1) Respect and follow the planning restrictions, standards and codes provided by the government and local authorities.

2) Implement sound environment principles through self-regulation.

3) Undertake environmental impact assessment for all new projects and conduct regular environment audits for all ongoing activities, leading to development of environmental improvement programmes.

4) Be aware of, and sensitive to, protected or threatened areas, species and scenic amenity; undertake landscape enhancement wherever possible.

5) Ensure that all structures are unobtrusive and do not interfere with the natural ecosystem to the extent possible.

6) Just as the government authorities and the tourism operators play fundamental roles in the success of ecotourism, so does the tourist.

7) Recognise the optimal environmental capacity and sociological use limits of the site in creating tourist facilities; also take into account the safety and convenience of tourists.

8) Design buildings strictly on functional and environmental considerations and avoid over-construction.

-94-
9) Use local material and designs to the extent possible in construction.

10) Employ eco-friendly physical planning, architectural design and construction of tourist facilities, for example use solar energy, capture and utilise rainwater, recycle garbage, use natural cross-ventilation instead of air conditioning, ensure a high level of self-sufficiency in food through orchards, ecological farms, aquaculture and such.

11) Employ energy and water-saving practices to the extent possible; freshwater management and controlled sewage disposal should also be practised.

11) Control air emissions, chemical pollutants and noise.

12) Control and reduce environmentally unfriendly products such as asbestos, CFCs, pesticides and toxic, corrosive, infectious, explosive or flammable material.

13) Respect and support historic or religious objects and sites.

14) Provide information and interpretive services to visitors especially on attractions and facilities, safety and security, local customs and traditions, prohibitions and regulations and expected behaviour.

15) Ensure adequate opportunities for visitors to commune with nature and native cultures.

16) Provide correct information in marketing ecotourism products, as visitors who appreciate ecotourism products usually belong to environmentally-aware groups.

17) Include training and research programmes on environmental issues for company staff.

18) Prepare tourists before their visit to minimise possible negative impacts while visiting sensitive environments and cultures.

19) Ensure safety and security of visitors and inform them of precautions to be taken.

20) Exercise due regard for the interest of the local population, including its history, tradition and culture and future economic development.

21) Involve the local community to the extent possible in various activities and vocations.

The responsibilities of Ecotourists:

1) Help conserve habitats of flora and fauna as well as any site, natural feature or culture, which may be affected by tourism.

2) Make no open fires and discourage others from doing so. If water has to be heated with scarce firewood, use as little as possible. Where feasible, use kerosene or fuel-efficient wood stoves.

3) Remove litter, burn or bury paper and carry back all non-degradable litter.
Tourism and Environmental Laws

4) Keep local water clean and avoid using pollutants such as detergents in streams or springs. If no toilet facilities are available, relieve yourself at least 30 meters away from water sources and bury or cover the waste.

5) Leave plants to flourish in their natural environment and avoid taking away cuttings, seeds and roots.

6) Leave campsites clean after use.

7) Help guides and porters to follow conservation measures. Do not allow cooks/porters to throw garbage in streams or rivers.

8) Respect the natural and cultural heritage of the area and follow local customs.

9) Respect local etiquette and do not wear tight-fitting clothes.

10) Respect privacy of individuals and ask permission to take photographs of local inhabitants.

11) Respect holy places; do not touch or remove religious objects.

12) Strictly follow the guidelines for personal safety and security and always take your own precautions and safety measures.

Role of the Host community:

1) Realise and respect the value of the environment, the flora and fauna, the monuments and your cultural heritage.

2) Practice conservation of nature and culture as a way of life.

3) Establish guidelines to protect valuable local resources and foster tourism management.

4) React to the potential threat of investors who see opportunities in development but lack sensitivity to local values.

5) Become effective nature guides and conservationists of natural areas by utilising practical and ancestral knowledge of the natural features of the area.

6) Be friendly to the visitors and help them to practise ecotourism principles. National Tiger Reserve Authority Guidelines on Ecotourism in and around protected areas: The mushrooming of tourist facilities around protected areas has led to the exploitation, degradation, disturbance and misuse of fragile eco-systems.

These directives and guidelines for ecotourism are applicable to any Protected Areas Tiger Reserve, including National Parks, Wildlife Sanctuaries, Community reserves, Conservation Reserves, Sacred Groves, or Pilgrimage Spots located within protected areas and forested areas.
These guidelines are based on the key recommendations of the Tiger Task Force (2005), provisions contained in the Wildlife (Protection) Act, 1972 as amended in 2006, the revised guidelines of the Centrally Sponsored Scheme of Project Tiger and the provisions of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006.

♣ Synergy between various stakeholders are required.
♣ State Government must develop a State-level Ecotourism Strategy.

State-level Ecotourism Strategy

a) Forest and wildlife conservation in ecologically sensitive landscapes including protected areas
b) Local community participation and benefit-sharing
c) Sound environmental design and use of locally produced and sustainable materials
d) Conservation education and training
e) Adequate machinery for monitoring and evaluation of the impact of ecotourism activities
f) Capacity building of local communities in planning, providing and managing ecotourism facilities
g) Develop appropriate land use and water management planning and regulation for maintaining the ecological integrity of landscape in and around protected areas

♣ No new tourist facilities are to be set up on forest lands neither forest rest houses outside protected areas should be converted into tourist facilities.
♣ State government should levy a “local conservation fee” as a minimum 10 per cent of turn-over, on all tourist facilities within a minimum 5 km of the boundary of a Protected Area, and identified wildlife corridors / sensitive habitats and Ensure that resources generated from tourism can be earmarked for protection, conservation and local livelihood development, tackling human wild animal conflict and welfare measures of field staff.
♣ The State Forest Department should be the arbiter in case of any dispute between stakeholders .
♣ A State Level Steering Committee must do a quarterly review of the the recommendations contained in the State-level Ecotourism Strategy.
  – Chairman : Chief Minister or any person appointed by him
  – Convener : Chief Wildlife Warden of the State
  – Members : representation from local communities, forest dwellers that live in and around Protected Areas, Tribal Welfare Department, Panchayati Raj Institution and Civil Society Institutions.
Tourism and Environmental Laws

A Local Advisory Committee (LAC) must be constituted for each Protected Area by the State government. Local Advisory Committee functions

1) Reviewing and recommending the Ecotourism strategy to the state government.
2) Site specific restrictions on buildings and infrastructures in private areas in close proximity to core/critical tiger habitat/National Park/Sanctuary or buffer zone.
3) Half yearly monitoring all tourist facilities falling within 5 km of a Protected Area.
4) Monitoring activities of tour operators.

♣ The Chief Wildlife Warden of the State must ensure Ecotourism Plan for each Protected Area must be approved by the State government and LAC and should be consistent with the State Ecotourism strategy. The plan should be put in the public domain; including in the local language.

♣ The Ecotourism plan should include: a monitoring mechanism, estimated carrying capacity tourism zones, and demarcation of the area open to tourism on the basis of objective, scientific criteria.

♣ Protected Area Management must ensure no tourism activities take place in core Tiger Reserve and Forest dwellers who have been relocated will be given priority in terms of livelihood generation activities related to community based ecotourism in the Protected Area. NTCA’s ecotourism guidelines challenged by the Pench Jungle Lodges Federation:

Contentions:

♣ NTCA has no powers to ask states to appoint LAC.

♣ Questions the need for a LAC when there is already a steering committee under respective chief ministers and state forest ministers and also a panel for Tiger Conservation Foundations.

♣ The representatives like block development officers (BDOs), subdivisional officers (SDOs) among others to be appointed to the committee are persons who have no knowledge about tourism and conservation.

♣ Challenges the park management’s decision to cut carrying capacity of vehicles to Pench Tiger Reserve by 50 per cent. This is due to reasons such as impact of vehicles on breeding of animals, which seems unscientific.

♣ Challenged the charging of conservation fee of Rs. 500 to Rs. 3,000 per room per month from resorts. It an extra tax on them.